

(25,442)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1916.

No. 612.

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INTERNATIONAL & GREAT NORTHERN RAILWAY  
COMPANY ET AL., PLAINTIFFS IN ERROR,

*vs.*

ANDERSON COUNTY, CITY OF PALESTINE, GEORGE A.  
WRIGHT, ET AL.

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IN ERROR TO THE COURT OF CIVIL APPEALS, SIXTH SUPREME  
JUDICIAL DISTRICT, STATE OF TEXAS.

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a      INTERNATIONAL & GREAT NORTHERN RY. Co., Plaintiff in  
Error,  
vs.  
ANDERSON COUNTY et al., Defendants in Error.

Transcript of the Record, Proceedings in Supreme Court, and Pro-  
ceedings Taking Out Writ of Error to Supreme Court of the United  
States to the Court of Civil Appeals of the Sixth Supreme Judicial  
District of Texas, Certificate Thereto and General Certificate to the  
Whole Transcript.

b      This transcript is made in compliance with a writ of error  
filed in this Court July 28, 1916, allowed by Chief Justice  
Willson of this Court, and returned herewith.

July 28th, 1916.

*Præcipe.*

INTERNATIONAL & GREAT NORTHERN RAILWAY COMPANY, Plaintiff  
in Error,  
vs.  
ANDERSON COUNTY et al., Defendants in Error.

E. T. Rosborough, Esq., Clerk of the Court of Civil Appeals for the  
Sixth Supreme Judicial District, Texarkana, Texas.

DEAR SIR: In the above case, No. 1351 on your docket, we desire  
you to make the transcript of the record so as to include the follow-  
ing:

- (1) Record on appeal from the trial court;
- (2) Statement of Facts on appeal from the trial court;
- (3) Opinion of the Court of Civil Appeals affirming the case;
- (4) Judgment of affirmance of the Court of Civil Appeals;
- (5) Appellant's motion for rehearing in the Court of Civil Ap-  
peals;
- (6) Opinion of the Court of Civil Appeals overruling motion for  
rehearing;
- (7) Order of the Court overruling motion for rehearing;
- (8) Application for Writ of Error to the Supreme Court  
of the State of Texas to review the decree and opinion of the  
Court of Civil Appeals of the Sixth Supreme Judicial District;
- (9) Decree of the Supreme Court of Texas overruling Application  
for Writ of Error;
- (10) Motion for rehearing filed in the Supreme Court of Texas;
- (11) Decree of the Supreme Court of Texas overruling motion for  
rehearing;
- (12) Petition for Writ of Error from the Supreme Court of the  
United States, allowed by Chief Justice S. P. Willson of your Court;
- (13) Will of McAshan, probate thereof and letters to his wife;
- (14) Supersedeas bond approved by Chief Justice Willson;

- (14a) Writ of Error;
- (15) Citation signed by Chief Justice Willson;
- (16) Copy of citation signed by attorneys for Defendants in Error and others, waiving service thereof and accepting notice of the lodging in this Court of copy of Writ of Error.
- (170) Assignments of Error with these last proceedings;
- (18) Prayer for reversal.

Yours truly,

WILSON, DABNEY & KING.

D./I.

We, the undersigned Attorneys of Record for the Defendants in Error in this case, accept notice of this Præcipe and state that we do not desire to have anything included in the transcript of the Record in addition to what is stated above.

THOS. B. GREENWOOD,  
CAMPBELL & SEWELL,  
JNO. C. BOX,

*Attorneys for Anderson County et al.,  
Defendants in Error.*

Filed E. T. Rosborough, Clerk Court Civil Appeals for the Sixth Supreme Judicial District of Texas.

d

No. 1351.

RECORD.

INTERNATIONAL & GREAT NORTHERN RAILWAY Co., Appellant,  
vs.  
ANDERSON COUNTY et al., Appellees.

Appeal from Cherokee County, Texas.

International & Great Northern Railway Co., Appellant.

Filed Apr. 28, 1914. E. T. Rosborough, Clerk Court of Civil Appeals, Sixth Supreme Judicial Dist. of Texas, By ———, Deputy.

e

STATE OF TEXAS.

*County of Cherokee:*

At a term of the District Court of Cherokee County, begun and holden at Rusk, within and for the County of Cherokee, before the Honorable A. E. Davis, Judge, commencing on the 8th day of December, 1913, and ending on the 7th day of February, 1914, the following case came on for trial, to wit: Anderson County et al. vs. International & Great Northern Railway Company, No. 6415.

## PLAINTIFFS' ORIGINAL PETITION.

Filed February 7, 1912.

THE STATE OF TEXAS,  
COUNTY OF ANDERSON.

In District Court. To April Term, 1912.

*To the Honorable Judge of the District Court of Anderson County, Texas.*

The original petition of Anderson County, and of the City of Palestine, and of Geo. A. Wright, J. W. Ozment, A. L. Bowers, Jno. R. Hearne, Z. L. Robinson, E. W. Link, R. C. Sewall, ~~A. B. Hodges~~, Jno. M. Colley and P. H. Hughes, citizens of the City of Palestine, Texas, who sue herein in behalf of themselves and of all other citizens of said City of Palestine, styled herein plaintiffs, complaining of the International and Great Northern Railway Company, styled herein defendant, would respectfully show to the court:

### First.

That Anderson County is, and has been since prior to the 1st day of March, 1872, a body corporate and politic, created and organized as a County by the Legislature of the State of Texas.

That the City of Palestine is a municipal corporation, duly incorporated and chartered as a city of over ten thousand inhabitants, by special Act of the Legislature of Texas, approved on the 19th day of March, 1909, and is the successor of the City of Palestine, duly incorporated under the laws of Texas as a municipal corporation, since prior to the 1st day of March, 1872.

That each of the plaintiffs, Geo. A. Wright, J. W. Ozment, A. L. Bowers, Jno. R. Hearne, Z. L. Robinson, E. W. Link, R. C. Sewall, ~~A. B. Hodges~~, Jno. M. Colley and P. H. Hughes, resides in the City of Palestine, in the

County of Anderson, and State of Texas, and each of them is a citizen of said city and the owner of real and personal property in said city.

That each of the last named plaintiffs has resided in said City of Palestine, and has been the owner of real and personal property therein since long prior to the 1st day of September, 1911; and, the plaintiffs Geo. A. Wright, J. W. Ozment and E. W. Link have been such resident citizens and property owners since prior to the 1st day of March, 1872.

That the citizens of the City of Palestine are numerous, aggregating in number some twelve thousand, and they have a joint and common interest in having the general offices, machine shops and round houses of the International and Great Northern Railroad kept and maintained, by the defendant, at Palestine. That it is impracticable to make all of said citizens parties to this suit, in their own proper persons, and hence this suit is brought, by the individual named plaintiffs, in behalf of each and all other citizens of said city, as well as in behalf of themselves.

That the defendant, International and Great Northern Railway Company, is a corporation, organized under the laws of Texas, as hereinafter shown, and required by law to keep and maintain its general offices at the City of Palestine, in the County of Anderson, Texas.

That the treasurer of the defendant is A. R. Howard, who resides in the County of Anderson, Texas, but who is temporarily at Houston, in Harris County, Texas.

That the defendant has local agents representing it in the County of Anderson, Texas.

#### Second.

That, on the 22nd day of October, 1866, the Legislature of Texas, by an Act entitled "An Act to incorporate the Houston and Great Northern Railroad Company," created and chartered that Company, and authorized it to construct, own, maintain and operate a railroad, com-

mencing at the City of Houston and running northward to Red River. That said Act authorized said Company to form a junction and connection with any other road, in such manner as would best secure their construction.

That, on the 5th day of August, 1870, the Legislature of Texas, by an Act entitled "An Act to incorporate the International Railroad Company and provide for the aid of the State of Texas in construction of same," created and chartered that Company, and authorized it to construct, own, maintain and operate a railroad from such point on Red River as nearly opposite the town of Fulton, in the State of Arkansas, as might be found expedient in forming a junction with the railway known as the "Cairo and Fulton Railway," then being constructed, by the most practicable route across the State of Texas, by way of Austin and San Antonio, to the Rio Grande River, at such point at or near Laredo as might be selected by the Company; that said Act authorized the International Railroad Company to connect itself with any other railroad Company, within or without the State, and to operate and maintain its railroad in connection or in consolidation with any other railroad company, as it might deem best.

That, acting under said Act of August 5th, 1870, the International Railroad Company had, prior to the 15th day of March, 1872, constructed a portion of its line of railroad from at or near the town of Hearne, in Robertson County, Texas, to the City of Palestine, in Anderson County, Texas, and was regularly operating said line of railroad, as a common carrier of freight and passengers for hire, and was maintaining a depot at said City of Palestine.

That heretofore, to-wit: On or about the 15th day of March, 1872, the Houston and Great Northern Railroad Company had constructed under its charter its line of railroad from the City of Houston northward to the north boundary line of Houston County, Texas; and, on

or about said date, said Houston and Great Northern Railroad Company, acting by its duly authorized president, Galusha A. Grow, contracted and agreed, in Anderson County, Texas, with the citizens of the City of Palestine, Texas, acting by and through Judge John H. Reagan, to extend its said line of railroad from the north boundary line of Houston County, to intersect the line of the International Railroad Company at Palestine, and to establish a depot within one-half mile of the Court House at Palestine, and to commence running cars regularly thereto, by the 1st day of July, 1873, and to thereupon locate and establish, and forever thereafter keep and maintain the general offices, machine shops and round houses of the Houston and Great Northern Railroad at the City of Palestine, for and in consideration of the promise and agreement then made, upon the part of said Judge John H. Reagan, to make a thorough canvass of Anderson County, to induce the electors thereof to authorize, by their votes, the issuance of the interest-bearing bonds of said county, in the principal sum of \$150,000, and, for and upon the further consideration that Anderson County, on authorization of its electors, in the manner prescribed by law, should issue and deliver to the Houston and Great Northern Railroad Company its interest bearing bonds in said principal sum of \$150,000, upon the completion of said railroad to its intersection with the International Railroad at Palestine, and upon the establishment of a depot within a half mile of the Court House, and upon the commencement of the running of cars regularly to such depot.

That if said contract did not expressly name the citizens of Palestine as parties thereto (as plaintiffs expressly aver it did) yet the same was made for their benefit and in their behalf, and such citizens, at that time and throughout the future, including the plaintiffs, were the parties intended, by both Judge John H. Reagan and the Houston and Great Northern Railroad Company, as



the parties to be benefited by the performance of all the obligations of the Railroad Company under said contract, and especially of those obligations which related to the location and maintenance of general offices, machine shops and round houses at Palestine.

That in order to induce the electors of Anderson County to authorize the issuance and delivery to the Houston and Great Northern Railroad Company of the interest bearing bonds of Anderson County, in the principal sum of one hundred fifty thousand dollars, which bonds are hereinafter more fully described, the Houston and Great Northern Railroad Company, acting by its duly authorized President, Galusha A. Grow, and by other duly authorized agents, on or about the 15th day of March, 1872, and on or about the last days of April, 1872, and on or about the first days of May, 1872, and throughout the time from about the 15th day of March, 1872, to the 4th day of May, 1872, promised, agreed and represented, unto and with said Anderson County and the electors thereof, that the general offices, machine shops and round houses of the Houston and Great Northern Railroad, upon the completion of said railroad to Palestine, would be established and forever thereafter maintained at Palestine, in Anderson County, Texas.

That said promises, agreements and representations were deliberately authorized and made by the Houston and Great Northern Railroad Company, with the intention that the electors of Anderson County should act and rely upon same. That the electors of Anderson County were induced, by said promises, agreements and representations, to authorize and therefore did authorize, by their votes at an election held in said County on the first, second, third and fourth days of May, 1872, the issuance and delivery to the Houston and Great Northern Railroad Company of the interest bearing bonds of Anderson County, for the principal sum of One Hundred and Fifty Thousand Dollars (\$150,000) in denominations of

five hundred dollars (\$500.00), payable in twenty years from their date, with interest at the rate of 8 per cent per annum, as per coupons to be attached, the interest and two per cent of the principal to be paid on the first day of January of each year, said bonds to be issued and delivered upon the completion of said railroad to an intersection with the International Railroad at Palestine, and upon the establishment of a depot within a half mile of the Court House at Palestine, and upon the commencement of the regular running of cars by said Company to such depot. That said electors would not have authorized the issuance and delivery of said bonds, nor the offer of same to the Houston and Great Northern Railroad Company, but for the inducement of the above mentioned promises, agreements and representations, by the Company, that it would establish and forever maintain general offices, machine shops and round houses at Palestine, nor but for the fact that the electors relied and acted upon same.

That the said Judge John H. Reagan made a thorough canvass of Anderson County between about the 15th day of March, 1872, and the 4th day of May, 1872, to induce the electors of Anderson County to vote to authorize the issuance of said bonds, in strict conformity with his promise to, and agreement with, the Houston and Great Northern Railroad Company and its president, as hereinbefore alleged.

That said election was held under and by virtue of a proper order of the Commissioners' Court of Anderson County, Texas, and subsequently, on the 6th day of May, 1872, an order was entered in said court declaring that more than two-thirds of the qualified voters of Anderson County had voted in favor of the issuance of said bonds.

That prior to the 31st day of December, 1872, the Houston and Great Northern Railroad Company completed its railroad from the north boundary of Houston County to its intersection with the International Railroad at Pales-



tine, and built a depot within one-half mile of the Court House at Palestine, and commenced to run its cars regularly thereto, and thereafter, on or about the 29th day of January, 1873, said Company, with its President, Galusha A. Grow, applied to the Commissioners' Court of Anderson County for the interest bearing bonds of said County in the principal sum of \$150,000, as hereinbefore described, and as authorized by the electors of said County; and, in order to induce the Commissioners' Court of Anderson County to issue and deliver said bonds, the said Houston and Great Northern Railroad Company, acting by its duly authorized President, Galusha A. Grow, again promised, agreed and represented unto said County and said Commissioners' Court that the Company had already begun to establish and would thereafter forever maintain its general offices, machine shops and round houses at Palestine; and, acting on said promise, agreement and representation, and relying on same, as well as on the previous promises, agreements and representations of said Company, as hereinbefore set out, the said Commissioners' Court was induced to issue and deliver, and on or about the 29th day of January, 1873, did issue and deliver, unto the Houston and Great Northern Railroad Company, the interest bearing bonds of Anderson County, as theretofore authorized by the electors, bearing date as of Dec. 31st, 1872, for the principal sum of \$150,000, in denominations of \$500 each, payable in twenty years from their date, with interest from their date at the rate of 8 per cent per annum, as per coupons attached, the interest and two per cent of the principal payable on the 1st day of January of each year, commencing January 1st, 1874.

That if the President of the Houston and Great Northern Railroad Company and the other agents of said Company were not expressly authorized by it to make the contracts, promises, agreements and representations hereinbefore alleged (as plaintiffs expressly aver they

were), yet the said Houston and Great Northern Railroad Company was nevertheless bound thereby; for plaintiffs aver that the said Houston and Great Northern Railroad Company, with full knowledge of the facts hereinbefore plead acquiesced in, approved and ratified each and all of the aforesaid contracts, promises, agreements and representations of its said President, and of its other agents, with the intention to adopt same and to be bound thereby, and, with such knowledge, obtained and accepted the services of Judge John H. Reagan, as above shown, and obtained, accepted and retained the above mentioned bonds of Anderson County, as well as the proceeds thereof, and this plaintiffs are ready to verify.

That in September, 1873, the Houston and Great Northern Railroad Company and the International Railroad Company, by unanimous vote of their respective stockholders, united, consolidated, and merged the railroads, properties, rights, franchises, powers and capital stock of the two companies, under the name of the International and Great Northern Railroad Company, and this consolidation was approved, ratified and confirmed by the Legislature of the State of Texas, by Acts approved respectively on the 24th day of April, 1874, and on the 10th day of March, 1875.

That by Section 2 of the Act of April 24th, 1874, it was expressly provided that all acts theretofore done in the name of either of said companies should have the same binding force and effect upon the International and Great Northern Railroad Company that they had upon the respective companies.

That the Houston and Great Northern Railroad Company, in part performance of the aforesaid contracts, promises and agreements, promptly established the machine shops and round houses of the Houston and Great Northern Railroad at Palestine, Texas, and maintained the same there until the consolidation of the Houston and Great Northern Railroad Company with the Interna-

tional Railroad Company; and thereafter, to the present time, the machine shops and round houses of the International and Great Northern Railroad, in further performance of said contracts, promises and agreements, have been continuously maintained, by the International and Great Northern Railroad Company, and by the International and Great Northern Railway Company at Palestine, Texas.

That heretofore, to-wit: On or about the first of the year 1875 (plaintiffs being unable after this lapse of time to more definitely fix the date), the International and Great Northern Railroad Company, acting by its duly authorized general manager, H. M. Hoxie, contracted and agreed with the citizens of the City of Palestine, Texas, among whom were the plaintiffs, Geo. A. Wright and J. W. Ozment, to fully and completely perform the promises, contracts and agreements of the Houston and Great Northern Railroad Company, with said citizens and with Anderson County and with the electors of said County, by at once locating the general offices of the International and Great Northern Railroad at Palestine, and by thereafter forever keeping and maintaining the general offices, machine shops and round houses of said International and Great Northern Railroad at Palestine, for and in consideration of the bonds theretofore issued by Anderson County to the Houston and Great Northern Railroad Company, and for the further and additional consideration that said citizens should at once construct and complete, at their own cost and expense, any and all houses, at Palestine, Texas, which might be demanded by the International and Great Northern Railroad Company, in accordance with such plans or specifications as might be furnished by the Company, through its officers, for occupancy, at reasonable rentals, by employees of said Company and their families, and especially by general officers of said Company, their families and clerks. That the citizens of Palestine,

as required by said contract and agreement, did at once, in the early part of the year 1875, construct and complete, at their own cost and expense, amounting to many thousands of dollars, each and all of the houses, at Palestine, Texas, which were demanded by the International and Great Northern Railroad Company, numbering more than twenty, in accordance with the plans and directions furnished by the Company and its officers, for occupancy, at reasonable rentals, by the employees of said Company and their families, and especially by general officers of said Company, their families and clerks, to the entire satisfaction of the International and Great Northern Railroad Company; and, thereupon the said International and Great Northern Railroad Company, became bound, by its aforesaid contract and agreement, (as well as by the previous contract and agreement of one of its constituents), to forever keep and maintain the general offices, machine shops, and round houses of the International and Great Northern Railroad at Palestine.

That if the general manager of the International and Great Northern Railroad Company, H. M. Hoxie, was not expressly authorized by said Company, to make the contract and agreement hereinbefore set out, which he did make, in behalf of said Company, with the citizens of Palestine, (as plaintiffs expressly aver he was), yet the International and Great Northern Railroad Company was nevertheless bound thereby; for plaintiffs aver that said Company, with full knowledge of said contract and agreement, acquiesced in, approved, and ratified same, with the intention to adopt it and be bound thereby, and with such knowledge, said Company accepted the benefits of the expenditures made by the citizens of Palestine in the construction of houses for its employees as above shown; and, in performance of its obligations under said contract and agreement, the International and Great Northern Railroad Company did immediately, and in the early part of the year 1875, locate and establish the gen-

eral offices of the International and Great Northern Railroad at Palestine, and did thereafter continuously maintain such general offices at Palestine, until the 1st day of September, 1911; and, in compliance with the aforesaid contract and agreement, the International and Great Northern Railroad Company and the International and Great Northern Railway Company have continuously maintained the machine shops and round houses of the International and Great Northern Railroad at Palestine, from the date of said contract and agreement to the present time.

That under the laws of Texas, the International and Great Northern Railroad Company, had, prior to the 9th day of May, 1911, become the owner of 1106 miles of railroad, extending from Palestine to Houston; from Longview, via Palestine, to Laredo; and from Spring to Fort Worth; with several branches, spurs and terminals; and had also become the owner of trackage rights over 53.5 miles of railroad, including the Galveston, Houston and Henderson Railroad, from Houston to Galveston, together with the franchise to operate said 1106 miles of railroad and said 53.5 miles of railroad, as a common carrier of freight and passengers for hire, and had become the owner of valuable equipment and other property, connected with said lines of railroad and the operation thereof. That said railroads, franchises, equipment and other property were owned and held by the International and Great Northern Railroad on said 9th day of May, 1911, subject to the lien of a mortgage, of date Nov. 1st, 1879, securing bonds in the principal sum of \$11,291,000; and also subject to the lien of a mortgage, on specific property, securing certain bonds known as Colorado River Bridge bonds, in the principal sum of \$198,000, and also subject to the lien of a mortgage, on specific property, securing a loan upon the Company's San Antonio Station in the principal sum of \$42,000, and also subject to a lien on certain equipment for the principal sum

of \$392,650, and also subject to the lien of a mortgage, of date March 1st, 1892, securing bonds and scrip in the principal sum of \$2,966,052.50, besides interest; and also subject to a valid subsisting judgment and decree of foreclosure of the lien of a mortgage, dated June 15th, 1881, for the sum of \$12,165,545.60, with six per cent per annum interest from May 10th, 1910, said judgment and decree for foreclosure providing that said railroads, franchises, equipment and the other property of said Railroad Company should be sold subject to the lien of the mortgage of date Nov. 1st, 1879, and also subject to the lien of the mortgage securing said Colorado River Bridge Bonds, and subject to the lien of the mortgage securing said loan on the San Antonio Station, and also subject to the lien on said equipment, but not providing that said railroads, franchises, equipment and other property should be sold subject to the lien of said mortgage of date March 1st, 1892, though the trustee under the mortgage of date March 1st, 1892, was a party to said judgment and decree of foreclosure, and though such trustee, and the holders of the bonds secured by said mortgage of date March 1st, 1892, were bound by said judgment and foreclosure.

That on the said 9th day of May, 1911, the owners of substantially all of said \$2,966,052.50, of bonds and scrip, with accrued interest, had acquired, or had arranged to acquire, substantially all of said judgment of foreclosure of said mortgage, of date June 15th, 1881, for \$12,165,545.60, with 6 per cent per annum interest from May 10th, 1910, or had acquired, or had arranged to acquire, the bonds and mortgage on which said judgment was based; and, on said date, acting by and through certain agents theretofore appointed and authorized, called a "Committee of Third Mortgage Bondholders," the said owners, among whom were the owners of all outstanding stocks of said International & Great Northern Railroad Company, entered into a certain agreement, for the reorgani-

zation of the fiscal affairs of the Company, upon the following basis in substance, to-wit:

First: That the railroads and property of the International and Great Northern Railroad Company should be sold under the above mentioned judgment and decree of foreclosure, and should be purchased by a trustee, and that the purchase price, save an inconsiderable part of the whole, should be met and paid by the surrender for cancellation of foreclosed bonds (as the terms of the foreclosure decree expressly authorized), and that the remaining part of such purchase price should be paid in cash, fully offset by cash belonging to the Company and included in the foreclosure.

Second: That said trustee, with such nominal associates as might be deemed necessary, should then form a corporation, under the laws of Texas, for the purpose of acquiring, owning, maintaining and operating the International and Great Northern Railroad.

Third: That said new corporation should issue \$13,750,000 par value of 5 per cent thirty-year bonds, secured by mortgage upon all railroads and property of the International and Great Northern Railroad Company, and that said bonds should be pledged to secure the three-year, 5 per cent notes, of the new corporation, in the principal sum of \$11,000,000, to be sold to bankers.

Fourth: That said new corporation should issue \$3,400,000 par value of 5 per cent non-cumulative, preferred stock, to be entitled to dividends up to 5 per cent, before any dividends should be payable on common stock, and to be preferred to the common stock, in liquidation of the assets and property of the new corporation. That said new corporation should reserve an additional \$1,600,000 par value of such preferred stock for exchange with a like amount of bonds at par.

Fifth: That said new corporation should immediately issue \$6,500,000, par value, of common stock, subject to such change as might be requisite to conform to any valu-



ation to be made by the Railroad Commission of the State of Texas.

Sixth: That the new corporation should sell to a syndicate (which is alleged to have been composed of the former stockholders of the Company) and to no one else, \$3,400,000, par value, of its preferred stock, \$2,500,000, par value, of its common stock, and \$1,600,000, par value, of its \$13,750,000 issue of bonds, such \$1,600,000 of bonds to be finally convertible into a like amount of preferred stock and to be sold under the agreement that the Syndicate would deposit the same to secure the Company's \$11,000,000 par value of three-year 5 per cent notes.

That the new corporation should exchange its common stock for said \$2,966,052.50 of bonds and scrip, with accrued interest, almost all of which belonged to the stockholders of the International and Great Northern Railroad Company.

Seventh: That the cash receipts of the new corporation, from its bond, stock and note issues, as aforesaid, should be applied to the payment unto the parties to said reorganization agreement, of the amount of said judgment and decree of foreclosure for \$12,165,545.60, with accrued interest, or to the payment unto said parties of the amount of the bonds secured by mortgage, on which said judgment and decree of foreclosure was based, and to the payment of the outstanding claims against the International and Great Northern Railroad Company, other than the liens subject to which the foreclosure sale was decreed, and to the payment of the expenses of reorganization.

That said agreement was made at the instance and request of the International and Great Northern Railroad Company, and was fully approved and assented to by said Company.

That in consummation of the foregoing reorganization agreement, the railroads and other property of the International and Great Northern Railroad Company



were sold, under said judgment and decree of foreclosure, on the 13th day of June 1911, when one Frank C. Nicodemus, Jr., of New York City, as trustee for the parties to said agreement, acting through said "Committee of Third Mortgage Bondholders," bid in said railroads and other property, for the sum and price of twelve million six hundred and forty-five thousand dollars (\$12,645,000), and the bid of said trustee was thereafter, on June 14th, 1911, duly accepted and confirmed by the court.

That thereafter, on or about the 10th day of August, 1911, the said Frank C. Nicodemus, Jr., and certain nominal associates, filed in the office of the Secretary of State, of the State of Texas, a certain charter forming a corporation, under Art. 4550, of Chapter 11, of Title 94, of the Revised Civil Statutes of Texas, as amended by the Act of the Legislature of Texas, approved on September 1st, 1910, under the name of the "International and Great Northern Railway Company," for the purpose of acquiring, owning, maintaining and operating the railroads theretofore forming the International and Great Northern Railroad, with an authorized capital stock of \$11,500,000, divided into 115,000 shares, of the par value of \$100 each, of which 50,000 shares should be preferred stock and 65,000 shares should be common stock, and thereby was created the defendant International and Great Northern Railway Company.

That subsequent to the filing of said charter, and on or about the 13th day of September, 1911, the said trustee, Frank C. Nicodemus, Jr., complied with his bid of \$12,645,000 for said railroads and other property, by surrendering for cancellation, by authority of the parties to said reorganization agreement, (who then owned the same), foreclosed bonds of the value of \$12,400,746.55, in satisfaction to that extent of said judgment and decree of foreclosure, and by the payment, as agent for the parties to said reorganization agreement, of \$244,253.45 in cash, of which cash \$100,000 had been deposited

at the date of the bid, and thereupon, by direction of said trustee, and in accordance with an assignment of his bid, and in consummation of said reorganization agreement, and with the approval of the court, decreeing and confirming the same, the railroads forming the International and Great Northern Railroad, and all appurtenant property, franchises and equipment, including \$556,987.55 in cash, were conveyed unto said new corporation, the defendant International and Great Northern Railway Company. That the International and Great Northern Railroad Company joined in said conveyance, in execution and ratification of said reorganization agreement.

That afterwards, on or about the 27th day of September, 1911, the defendant International and Great Northern Railway Company secured an order from the Railroad Commission of Texas, valuing the International and Great Northern Railroad and appurtenant property, rights and franchises at \$30,365,047.97, and approving the issuance, by the International and Great Northern Railway Company, of its bonds, secured by mortgage on said railroad and appurtenant property, rights and franchises, in the sum of \$13,750,000, to be dated August 1st, 1911, maturing August 1st, 1941, and bearing interest at the rate of 5 per cent per annum.

That the International and Great Northern Railway Company, on or about said September 27th, 1911, or prior thereto, issued and sold to bankers of New York its three-year 5 per cent notes, in the principal sum of \$11,000,000, and to secure the payment of such notes pledged, and caused to be pledged, said entire issue of bonds, for \$13,750,000, par value, said Company having executed a mortgage to secure said bonds upon the International and Great Northern Railroad, and all property and franchises owned or claimed by said Railway Company.

That the International and Great Northern Railway Company issued and sold to the Syndicate, which is alleged to have consisted of the stockholders of the Inter-

national and Great Northern Railroad Company, in further performance of said reorganization agreement, \$3,400,000, par value, of its non-cumulative 5 per cent preferred stock, and \$1,600,000, par value, of its bonds, said Syndicate obligating itself to pledge, and pledging, said bonds to secure the Company's three-year 5 per cent notes.

That under the valuation of the Railroad Commission of Texas, only \$1,422,000, par value, of common stock could be lawfully issued by the International and Great Northern Railway Company, in addition to other outstanding obligations. Hence, in order to carry out said reorganization agreement, and in compliance therewith, said Railway Company issued \$1,422,000, par value, of common stock, and conditional interim certificates, entitling the holders thereof to receive \$5,078,000, par value, of common stock whenever it might be legally issued by said Company in the future; and said Company transferred and conveyed all said common stock and conditional interim certificates to a corporation, organized under the laws of the State of Virginia, known as "The International and Great Northern Corporation," in exchange for \$6,500,000, par value, of the Corporation's common stock, divided into 65,000 shares, of the par value of \$100 each, and being all of its issued capital stock. That the Railway Company has sold to said Syndicate (which purchased said \$3,400,000 of preferred stock and said \$1,600,000 of bonds, convertible into preferred stock), \$2,500,000, par value, of the capital stock of "The International and Great Northern Corporation," and has exchanged, and offers to exchange, the remaining \$4,000,000, par value, of the capital stock of "The International and Great Northern Corporation" for said \$2,966,052.50 of bonds and scrip, with accrued interest, amounting to substantially \$4,000,000.

That the International and Great Northern Railway Company has applied the cash received from the sale of

its \$11,000,000, par value, of three-year 5 per cent notes (secured by its \$13,750,000, par value, of mortgage bonds), and from the sale of its \$1,600,000, par value, of mortgage bonds, and from the sale of its \$3,400,000 of preferred stock, and from the sale of its \$2,500,000, par value, of common stock, in compliance with said reorganization agreement, to the payment, unto the parties to said reorganization agreement, of the amount of said judgment and decree of foreclosure, for \$12,165,545.60, with 6 per cent per annum interest from May 10th, 1910, or to the payment, unto said parties, of the amount of the bonds, on which said judgment and decree was based, and to the payment of outstanding claims against the International and Great Northern Railroad Company other than the liens, subject to which the foreclosure sale was decreed, and to the payment of reorganization expenses.

That the parties to said reorganization agreement and their purchasing agent and trustee, Frank C. Nicodemus, Jr., had full and actual knowledge and notice of the facts herein plead, and of every right herein asserted, prior to the time that said trustee bid in the International and Great Northern Railroad, with its appurtenant property, franchises and equipment, and the defendant has had such actual knowledge and notice from the time of its organization to the present time. That plaintiffs gave formal, written notice of the causes of action herein alleged unto said purchasing agent and trustee, in advance of his bidding for said railroad and appurtenant property, franchises and equipment, and in advance of the cancellation of the foreclosed bonds, and this plaintiffs are ready to verify.

That since the Houston and Great Northern Railroad Company contracted and agreed to locate, keep and maintain the general offices, machine shops and round houses of the Houston and Great Northern Railroad at the City of Palestine, for a valuable consideration received, and since the International and Great Northern Railroad

Company contracted and agreed to locate, keep and maintain the general offices, machine shops and round houses of the International and Great Northern Railroad at the City of Palestine, for a valuable consideration received, and since the general offices, machine shops and round houses of the Houston and Great Northern Railroad and of the International and Great Northern Railroad have been located at the City of Palestine, in Anderson County, Texas, which county has aided said Houston and Great Northern Railroad and said International and Great Northern Railroad, by an issue of bonds, in consideration of such location being made: the laws of Texas, on the 1st day of September, 1911, and continuously afterwards to the present time, imposed, and do now impose upon the International and Great Northern Railway Company the performance of the public and statutory duty, enuring to plaintiffs' special benefit, to keep and maintain the general offices, machine shops and round houses of the International and Great Northern Railroad at the City of Palestine, in Anderson County; and the State of Texas, by general law, expressly forbade and prohibited, and still forbids and prohibits, any change, from said City, in the location of said general offices, machine shops and round houses. That the International and Great Northern Railroad Company, prior to the sale of its railroad and other property under said reorganization agreement, was not only bound by contract, but was bound by general law, as a part of its duty to the public, coupled with the enjoyment of its corporate franchises, to keep and maintain the general offices, machine shops and round houses of said railroad at the City of Palestine, and such duty could not be and was not impaired nor discharged by the sale of said railroad, with its appurtenant property and franchises, in consummation of said reorganization agreement.

That the general offices, maintained at the City of Palestine, for the operation of the International and Great

Northern Railroad (whether by the Company or by Receiver) for years prior to the 1st day of September, 1911, included that of Vice-President, Secretary, Treasurer, Auditor, General Freight Agent, General Manager, General Superintendent, General Passenger and Ticket Agent, Chief Engineer, Superintendent of Motive Power and Machinery, Master Mechanic, Master of Transportation, Fuel Agent, and General Claim Agent.

That in wilful disregard of its contract obligations unto plaintiffs, and in open and flagrant violation of the laws of the State of Texas, the defendant, International and Great Northern Railway Company, on or about the 1st day of September, 1911, undertook to change the location of all its general offices, except that of Superintendent of Motive Power and Machinery, and that of Master Mechanic, from the City of Palestine to the City of Houston, Texas, and undertook to establish the most important general office of its Traffic Manager without the State of Texas, in the City of New Orleans, in the State of Louisiana; and, in seeking to accomplish such changes the defendant has caused the Vice-President and General Manager, Secretary, Treasurer, Auditor, General Freight Agent, General Superintendent, General Passenger and Ticket Agent, Chief Engineer, Master of Transportation, Fuel Agent, and General Claim Agent, with their respective subordinates, engaged in the operation of the International and Great Northern Railroad, to remove to the City of Houston, in Harris County, Texas, and to there establish so-called general offices, from which their respective duties are performed; and, the defendant has caused the Traffic Manager for the International and Great Northern Railroad, together with his subordinates, to establish an office at New Orleans, La., from which their duties are performed.

That defendant has declared the purpose to change from the City of Palestine the location of the general offices of said Superintendent of Motive Power and Ma-



chinery, and of said Master Mechanic, and to change the location of the machine shops and round houses of said Railroad, as actually operated, immediately upon the institution of this suit, or of any suit of a like nature; and, the defendant will make the aforesaid changes, in further violation of law, unless prevented by the immediate issuance and service of the writ of injunction.

That acting upon the faith and credit of the contracts and agreements hereinbefore plead, and in reliance thereon, the plaintiffs have acquired property rights in the City of Palestine worth many hundreds of thousands of dollars.

That plaintiffs have been irreparably damaged by the transfer from Palestine of the general officers, and their subordinates, numbering some two hundred and fifty men, with an estimated pay roll of two hundred and fifty thousand dollars annually, such removal having greatly reduced the volume of business in said city and having materially depreciated all property values therein, and such damage, already amounting to over one hundred thousand dollars, will continue and increase until the return of said officers and their subordinates to their rightful location.

That should the defendant cease to maintain and operate said machine shops and round houses and the general offices of said Superintendent of Motive Power and Machinery and Master Mechanic, at the City of Palestine, with their annual pay roll far in excess of that of the removed general offices, as threatened by defendant, such action would destroy or depreciate plaintiffs' property to an amount far in excess of half a million dollars, and would imperil and largely sacrifice the property and business interest of said city, and there would be no way to measure the resulting injury nor to make compensation therefor, and the damages thus sustained would be inestimable and irreparable, and this plaintiffs are ready to verify.

That while the damages which would be sustained by plaintiffs by the continued absence of defendant's general officers, and their subordinates, from Palestine, during the pendency of this suit, would be great and irreparable, the trouble and cost to defendant of restoring such officers, with their subordinates, books and records, to Palestine, would be so slight and inconsiderable as to be trivial, the transfer from Palestine to Houston having been effected within a few hours, over defendant's own railroad, and by means of defendant's own trains, and the return could be as easily and cheaply accomplished.

That said general officers were transferred to Houston, with actual knowledge and notice, upon the part of the defendant, that this suit would be promptly brought, and that application would be made for a peremptory injunction, to restore the status of said general offices, machine shops and round houses, as they existed when the controversy arose between plaintiffs and defendant as to their location, and as such status had existed for more than thirty years.

That this petition is presented to the court at the earliest possible moment after plaintiffs became possessed through exercising the utmost diligence, of actual knowledge as to the facts pertaining to the reorganization of the International and Great Northern Railroad.

That plaintiffs have no adequate remedy at law for the wrongs and injuries inflicted upon them by defendant, nor to prevent the grievous wrongs and injuries with which they are threatened by the defendant, and in no other way can plaintiffs have any complete or adequate remedy for the wrongs and injuries already suffered by them, nor to prevent those with which they are threatened, save through the intervention of your Honor and of the Court with the writ of injunction.

That the exercise by your Honor of the power to apply the equitable remedy of injunction, without notice, while



essential to prevent irretrievable loss and injury to plaintiffs, can not, under the facts herein plead, work damage or injury to the defendant.

That the Hon. B. H. Gardner, Judge of the Third Judicial District of Texas, and Judge of the District Court of Anderson County, Texas, is one of the citizens of the City of Palestine, in whose behalf this suit is brought, and is the owner of property in said city, and he is also the father of the wife of the plaintiff R. C. Sewell, and hence said Judge is disqualified to hear and to act upon plaintiffs' application for injunction, or to make any order herein.

Wherefore, plaintiffs pray the Honorable Judge of the District Court to whom this petition is presented, for a writ of injunction, commanding the defendant to desist and refrain from changing the location of the machine shops and round houses of the International and Great Northern Railroad, as operated by defendant, from the City of Palestine; and to desist and refrain from changing the location of the general offices of the Superintendent of Motive Power and Machinery and of the Master Mechanic, engaged in the operation of said railroad, from the City of Palestine; and to desist and refrain from keeping or maintaining any other general offices in connection with the operation of said railroad, at any other place than the City of Palestine; and commanding the defendant to keep and maintain all of the general offices, for the operation of said railroad, at the City of Palestine, allowing the defendant such time as your Honor may deem reasonable for the return to the City of Palestine of defendant's general officers, now in the cities of Houston, Texas, and New Orleans, La., with their subordinates, books and records.

And plaintiffs pray that the defendant may be cited, as required by law, to answer this petition, that the court will hear proof, and that plaintiffs may have judgment, establishing the contracts and agreements herein

plead, and decreeing that the defendant specifically perform such contracts and agreements by forever keeping and maintaining at the City of Palestine the general offices, machine shops and round houses of the International and Great Northern Railroad, and for judgment enforcing the public duty of defendant to forever keep and maintain its general offices, machine shops and round houses at the City of Palestine, and that plaintiffs may have judgment that the injunction above applied for be made perpetual; and for all other and further relief, special and general, in law and in equity, to which plaintiffs may be rightly and justly entitled.

A. G. GREENWOOD,  
 CAMPBELL, SEWELL & STRICKLAND,  
 THOS. B. GREENWOOD,  
*Attorneys for Plaintiffs.*

THE STATE OF TEXAS,  
 COUNTY OF ANDERSON.

I, Geo. A. Wright, do solemnly swear that I am one of the plaintiffs in the foregoing petition, and that the matters of fact therein alleged are true, and that I make this affidavit in behalf of, and as agent for, my co-plaintiffs in said petition and myself.

GEO. A. WRIGHT.

Subscribed and sworn to before me by Geo. A. Wright, this the 6th day of February, 1912.

(L. S.) J. B. McDONALD,  
*Notary Public for Anderson County, Texas.*

THE STATE OF TEXAS,  
 COUNTY OF ANDERSON.

I, Mrs. Mollie Ford Reagan, do solemnly swear that I am the widow of Judge John H. Reagan, formerly of Anderson County, Texas; that I was present at the home of myself and Judge John H. Reagan, then my husband, on or about the 15th day of March, 1872, when Galusha A. Grow, acting in behalf of the Houston and Great Northern Railroad Company, offered to extend the line

of the Houston and Great Northern Railroad to Palestine, and I know, of my own personal knowledge, that, as a consideration for the bond issue desired from Anderson County, by said Company, in aid of the construction of said Railroad, the Company, through President Grow, offered unto the citizens of the City of Palestine, then represented by Judge Reagan, to locate and establish, and to thereafter forever maintain, the general offices, machine shops and round houses of the Houston and Great Northern Railroad, at the City of Palestine; that the plaintiff Geo. A. Wright was present when said offer was made; that I believe all of the averments of the foregoing petition to be true; and that this affidavit is made in behalf of the plaintiffs in said petition.

MRS. MOLLIE FORD REAGAN.

Subscribed and sworn to before me, by Mrs. Mollie Ford Reagan, on this the 6th day of February, 1912.

(L. S.)

J. B. McDONALD,

*Notary Public in and for Anderson County, Texas.*

THE STATE OF TEXAS,  
COUNTY OF ANDERSON.

I, J. W. Ozment, do swear that I am one of the plaintiffs in the foregoing petition; that I was a party to the contract and agreement between the citizens of Palestine and the International and Great Northern Railroad Company, on or about the first of the year 1875, and that the averments of said petition, relative to said contract and agreement, and relative to compliance therewith by the citizens of Palestine, to the satisfaction of said Company, are true; and I make this affidavit in behalf of, and as agent for my co-plaintiffs, in said petition and for myself.

J. W. OZMENT.

Subscribed and sworn to before me, by J. W. Ozment, on this the 6th day of February, 1912.

(L. S.)

J. B. McDONALD,

*Notary Public for Anderson County, Texas.*

THE STATE OF TEXAS,  
COUNTY OF CHEROKEE.

In Chambers, at Rusk, Texas.

The foregoing petition for injunction having been presented to me, on this the 7th day of February, 1912, and having been carefully considered, it is ordered that the Clerk of the District Court of Anderson County, Texas, do issue a writ of injunction commanding the defendant International and Great Northern Railway Company to desist and refrain from changing the location of the machine shops and round houses of the International and Great Northern Railroad, as operated by the defendant, from the City of Palestine; and to desist and refrain from changing the location of the general offices of the Superintendent of Motive Power and Machinery, and of the Master Mechanic, engaged in the operation of said Railroad, from the City of Palestine; and to desist and refrain from keeping and maintaining the general offices of the vice-president and general manager, secretary, treasurer, auditor, general freight agent, traffic manager, general superintendent, general passenger and ticket agent, chief engineer, master of transportation, fuel agent, and general claim agent, engaged in the operation of the International and Great Northern Railroad, at any other place than the City of Palestine; and commanding the defendant to keep and maintain the general offices above named, for the operation of said Railroad, with their general officers, subordinates and records, at the City of Palestine, provided that the defendant shall be allowed sixty days from this date within which to return to said City of Palestine such of its general officers as are now in the cities of Houston, Texas, and New Orleans, La., with their subordinates, books and records, said writ of injunction to issue upon the petitioners executing to the defendant a bond with two or more good and sufficient sureties, in the sum of Five Thousand Dollars, conditioned as required by law.

Witness my official signature in the town of Rusk,  
Texas, on this the 7th day of February, 1912.

JAMES I. PERKINS,  
*Judge of the Second Judicial District of Texas.*

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### WRIT OF INJUNCTION.

Anderson County et al.  
No. 8589.                      vs.  
International and Great Northern  
Railway Company.

In the District Court of Anderson County, Texas.

*The State of Texas: To the International and Great  
Northern Railway Company, Greeting:*

Whereas, Anderson County, the City of Palestine, Geo. A. Wright, J. W. Ozment, A. L. Bowers, Jno. R. Hearne, Z. L. Robinson, E. W. Link, R. C. Sewell, A. B. Hodges, Jno. M. Colley, and P. H. Hughes, plaintiffs in the above entitled and numbered cause, in the District Court of Anderson County, have filed a petition for injunction, alleging that you have undertaken to change the location from Palestine, Texas, in violation of law, of the general offices of the vice-president and general manager, secretary, treasurer, auditor, general freight agent, traffic manager, general superintendent, general passenger and ticket agent, chief engineer, master of transportation, fuel agent, and general claim agent, engaged in the operation of the International and Great Northern Railroad; and alleging that you will change, from the City of Palestine, in violation of law, unless restrained, the general offices of the Superintendent of Motive Power and Machinery and of the Master Mechanic, engaged in the operation of said Railroad, and alleging that you will change, from the City of Palestine, in violation of law,

unless restrained, the machine shops and round houses of the International and Great Northern Railroad; and alleging that the Houston and Great Northern Railroad Company contracted and agreed to locate, keep and maintain the general offices, machine shops, and round houses of the Houston and Great Northern Railroad at the City of Palestine, for a valuable consideration received, and was thereafter consolidated with the International Railroad Company, under the name of the International and Great Northern Railroad Company, by virtue of an act of the Legislature of Texas, which made all contracts and agreements of the Houston and Great Northern Railroad Company binding on the International and Great Northern Railroad Company, and alleging that the International and Great Northern Railroad Company contracted and agreed to locate, keep and maintain the general offices, machine shops and round houses of the International and Great Northern Railroad at the City of Palestine, for a valuable consideration received, and alleging that the general offices, machine shops and round houses of the Houston and Great Northern Railroad and of the International and Great Northern Railroad were located at the City of Palestine, in Anderson County, which county has aided the Houston and Great Northern Railroad and the International and Great Northern Railroad by an issue of bonds, in consideration of said locations being made at the City of Palestine; and alleging that the defendant International and Great Northern Railway Company has acquired the International and Great Northern Railroad, under a reorganization agreement, of date May 9th, 1911, with the public duty imposed upon said Railway Company, by general law, as it was imposed by general law on its predecessor companies, to keep and maintain said general offices, machine shops and round houses at the City of Palestine; and alleging that the general laws of the State forbid and prohibit any change in the location of said general offices, machine shops and

round houses; and praying for an injunction to restrain you from changing the location of said machine shops and round houses, and of the general offices of said Superintendent of Motive Power and Machinery, and of said Master Mechanic, from the City of Palestine, and to compel you to restore to the City of Palestine the said general offices above named, which you have undertaken to establish elsewhere; and whereas, the Honorable Jas. I. Perkins, Judge of the Second Judicial District of Texas, has issued his fiat on said petition, as follows, to-wit:

"THE STATE OF TEXAS,  
COUNTY OF CHEROKEE.

In Chambers, at Rusk, Texas.

The foregoing petition for injunction having been presented to me, on this the 7th day of February, 1912, and having been carefully considered, it is ordered that the Clerk of the District Court of Anderson County, Texas, do issue a writ of injunction commanding the defendant International and Great Northern Railway Company to desist and refrain from changing the location of the machine shops and round houses of the International and Great Northern Railroad, as operated by the defendant, from the City of Palestine; and to desist and refrain from changing the location of the general offices of the Superintendent of Motive Power and Machinery, and of the Master Mechanic, engaged in the operation of said Railroad, from the City of Palestine; and to desist and refrain from keeping and maintaining the general offices of the vice-president and general manager, secretary, treasurer, auditor, general freight agent, traffic manager, general superintendent, general passenger and ticket agent, chief engineer, master of transportation, fuel agent, and general claim agent, engaged in the operation of the International and Great Northern Railroad, at any other place than the City of Palestine, and commanding the defendant to keep and maintain the general



offices above named, for the operation of said Railroad, with their general officers, subordinates and records, at the City of Palestine, provided that the defendant shall be allowed sixty days from this date within which to return to said City of Palestine such of its general officers as are now in the cities of Houston, Texas, and New Orleans, La., with their subordinates, books and records, said writ of injunction to issue upon the petitioners executing to the defendant a bond with two or more good and sufficient sureties, in the sum of Five Thousand Dollars, conditioned as required by law.

Witness my official signature in the town of Rusk, Texas, on this the 7th day of February, 1912.

JAMES I. PERKINS,

*Judge of the Second Judicial District of Texas."*

And, whereas the said plaintiffs have executed and filed with the Clerk of the District Court of Anderson County, Texas, a bond in the sum of Five Thousand Dollars, payable and conditioned as required by law and the order of said Judge:

These are therefore to command you that you desist and refrain from changing the location of the machine shops and round houses of the International and Great Northern Railroad, as operated by you, from the City of Palestine; and that you desist and refrain from changing the location of the general offices of the Superintendent of Motive Power and Machinery and of the Master Mechanic, engaged in the operation of said Railroad, from the City of Palestine; and that you desist and refrain from keeping or maintaining the general offices of the vice-president and general manager, secretary, treasurer, auditor, general freight agent, traffic manager, general superintendent, general passenger and ticket agent, chief engineer, master of transportation, fuel agent, and general claim agent, engaged in the operation of the International and Great Northern Railroad, at any other place than the City of Palestine; and that you do keep

and maintain the general offices above named, for the operation of said railroad, at the City of Palestine, provided that you are allowed sixty days from the 7th day of February, 1912, within which to return to said City of Palestine such of your general officers as are now in the cities of Houston and New Orleans, with their subordinates, books and records, until the further orders of the District Court in and for the County of Anderson, Texas, to be holden at the Court House thereof, in Palestine, on the 28th day of April, 1912, when and where this writ is returnable.

Witness, F. R. Morris, Clerk of the District Court of Anderson County, Texas.

Given under my hand and the seal of said Court at office in Palestine, Texas, this the 7th day of February, 1912.

(L. S.) F. R. MORRIS,  
*Clerk of the District Court of Anderson County, Texas.*

**Bond for injunction was duly filed and approved and is omitted by agreement of counsel**

#### AGREEMENT.

Anderson County, et al.,  
No. 8589. vs.  
International & Great Northern Railway  
Company.

In the District Court of Anderson County, Texas, April Term, 1912.

We, the undersigned attorneys for the plaintiffs, and undersigned attorneys for the defendant, in the above numbered and styled cause, do hereby agree that said cause shall be continued at the April Term, 1912, of the District Court of Anderson County, Texas, the order of continuance to show the cause is continued by consent and without prejudice to the defendant's exceptions and

plea to the venue and jurisdiction of the District Court of Anderson County, Texas.

And we further agree that, if the appeal which has been taken by the defendant to the Court of Civil Appeals of the First Supreme Judicial District of the State of Texas at Galveston from the order of the Honorable James I. Perkins, Judge of the Second Judicial District of the State of Texas, granting an injunction in said cause, shall not be finally disposed of in said Court of Civil Appeals and in the Supreme Court of the State of Texas before any term of said District Court succeeding said April Term, 1912, said cause shall be continued at each term of said District Court commencing prior to said final disposition of said appeal in the Court of Civil Appeals and Supreme Court, each order of continuance to be by consent and without prejudice to said exceptions and plea of the defendant to the venue and jurisdiction of the District Court of Anderson County.

It is understood and agreed between the parties hereto that when said exceptions and plea to the jurisdiction are reached at any term of the District Court of Anderson County for hearing, and are heard, the same shall have the same standing as if they had been heard and disposed of at the first term of the court after the filing of the same, namely, said April Term, 1912.

Signed in triplicate this the — day of April, 1912, one copy being retained by the attorneys for the plaintiffs, one by the attorneys for the defendant, and the other to be filed in the District Court of Anderson County.

This agreement was recognized by the Court and the case continued from time to time in accordance with it.

Anderson County, et al.,  
No. 8589. vs.  
International & Great Northern Railway  
Company.

In the District Court of Anderson County, Texas.

*To the Honorable, the Judge of said Court:*

Now comes the International & Great Northern Railway Company, the defendant herein, and a resident citizen of Harris County, Texas, and appears for the sole purpose of objecting to the jurisdiction of this Court, and in that regard only answers as follows:

I.

It excepts to this Court taking jurisdiction of this case, because it does not appear from plaintiffs' petition that the defendant, the International & Great Northern Railway Company, has its domicile and place of residence in Anderson County, Texas, it being upon the plaintiffs as a prerequisite to the jurisdiction of this Court, in this suit, to show that the defendant was domiciled and had its principal offices, headquarters and residence in Anderson County, Texas.

II.

The defendant, the International & Great Northern Railway Company, excepts to this Court taking jurisdiction of this case, and to all proceedings by this Court in this case, except to the transfer of this case to the proper forum in Harris County, Texas, because it appears on the face of plaintiffs' petition not only that an effort is made to avoid stating the domicile, legal headquarters, but also because it appears from the petition that the defendant is legally incorporated under the laws of the State of Texas, and that it is a new corporation, and that it has placed its offices and headquarters in the City of Houston, in Harris County, Texas, and because it inferentially appears from the petition that its charter provided that its

headquarters, domicile and principal offices should be in Harris County, Texas.

Wherefore, this defendant prays that its exceptions to the jurisdiction of this Court be sustained, and that this Court take no action herein except to order the venue to be changed to the proper court of the County having jurisdiction of this cause, to-wit, to the proper forum in Harris County, Texas, and that the Clerk make up a transcript of all orders herein and certify them and transmit them as provided by law.

### III.

And further, subject to the above, and in the event that its above exceptions be overruled, the International & Great Northern Railway Company now presents this its plea of privilege to be sued in Harris County, Texas, which is the county of its residence, and in support of such plea represents as follows:

In support of this its plea, the International & Great Northern Railway Company attaches hereto and makes a part of this plea a true and correct copy of the articles of its incorporation, dated August 8th, 1911, and certified to by the Acting Secretary of State of the State of Texas, wherein it is provided that "the place at which shall be established and maintained the principal business office, the public offices and general offices of this corporation, is the City of Houston, in Harris County, State of Texas," and the copy of the charter of the defendant so attached is identified and marked Exhibit "A." In accordance with the provisions of this charter, the International & Great Northern Railway Company, the defendant, has maintained, since it commenced to act and since it has had any office whatever, its principal business office, its public office and its general offices in the City of Houston, in Harris County, Texas, and has always so maintained them, and still so maintains them, at which place is its domicile and residence, and it has no domicile or residence in the County of Anderson, Texas.

Further, this defendant represents that its foregoing stated place of residence is fixed and established; further, the defendant represents that neither at the time of the institution of this suit nor at the time of service of process herein upon this defendant, nor at the time of the filing of this plea, nor at any time whatsoever, was the International & Great Northern Railway Company, the defendant, a resident of Anderson County, Texas; and further, that neither at the time of the institution of this suit, nor at the time of the service of the process therein upon said defendant, nor at any time whatsoever, did it have its principal business office, its public offices, or its general offices, in Anderson County, Texas, but, on the contrary, at all such times and before and ever since the institution of this suit, the International & Great Northern Railway Company was a resident of Harris County, Texas, where said offices always have been and now are.

Further, the International & Great Northern Railway Company says that none of the exceptions to exclusive venue in the county of its residence mentioned in Article 1194 or Article 1585 of the Revised Statutes of the State of Texas exist in this case; except that it is true that the railroad of the defendant extends through and into Anderson County, Texas, and is operated through and into that county; and that the defendant has agencies and representatives in that county, to-wit, stations, freight and passenger agents therein, and persons in its services, but that there is a statute which prescribes that writs of injunction not granted to stay proceedings in a suit or execution on a judgment but granted against an inhabitant of this State in other cases, shall be returnable to and tried in the District or County Court of the county in which such defendant has his domicile, according to the amount of the matter in controversy.

Wherefore, upon its foregoing plea, the International & Great Northern Railway Company prays that its plea be in all things sustained, and that no other proceedings

be had in this Court, except to sustain its plea and to order the venue to be changed to the proper forum in Harris County, Texas, and that the Clerk of this Court make up a transcript of all the orders in this case and certify thereto as required by law, and transmit the same with the original papers to the Clerk of the Court to which the venue may be changed. The defendant prays for all other relief which may be its due under this plea.

THE STATE OF TEXAS,  
COUNTY OF HARRIS.

I, A. R. Howard, being duly sworn, do on my oath say that I am the secretary of the defendant, the International & Great Northern Railway Company, and that I have read the foregoing plea numbered three, and that the facts and allegations therein stated are true.

(Signed) A. R. HOWARD.

Sworn to and subscribed before me by A. R. Howard, secretary of the International & Great Northern Railway Company, this 20th day of April, 1912.

(L. S.) L. TEMME,

*Notary Public in and for Harris County, Texas.*

(Signed) WILSON & DABNEY,

ANDREWS, BALL & STREETMAN,

WILLIAMS & STEDMAN,

*Attorneys for International & Great Northern Railway Company.*

### EXHIBIT A.

Articles of Incorporation of International and Great Northern Railway Company, Dated August 8th, 1911.

Know All Men by These Presents:

That we, the undersigned, whose names are hereunto subscribed, being the purchaser at the sale hereinafter mentioned, and the associates of such purchaser, do hereby certify that we have, under and in pursuance of Article 4550 of Chapter 11 of Title 94 of the Revised Statutes of Texas, as amended by an act of the Legislature of the



State of Texas, approved September 1, 1910, associated ourselves together to form a corporation for the purpose of acquiring, owning, maintaining and operating the railroad, property and franchises sold at said sale and hereinafter described; and we do further certify, pursuant to the provisions of Chapter 1 of Title 94 of the Revised Statutes of Texas, as follows:

FIRST. The name of this corporation shall be International and Great Northern Railway Company.

SECOND. This corporation is organized for the purpose of acquiring, owning, maintaining and operating the railroads heretofore forming the International and Great Northern Railroad and purchased by Frank C. Nicodemus, Jr., one of the undersigned, at a sale thereof, held on June 13, 1911, pursuant to a decree of foreclosure and sale entered on or about May 10, 1910, in certain judicial proceedings brought for the foreclosure of a mortgage of the International and Great Northern Railroad Company known as its second mortgage, said decree having been made and entered by the United States Circuit Court for the Northern District of Texas, in a certain cause therein pending, wherein The Farmers' Loan and Trust Company, Trustee, was complainant and International and Great Northern Railroad Company and others were defendants, which said decree was subsequently adopted and entered, in certain ancillary causes between the same parties, by the Circuit Courts of the United States for the Southern District of Texas, the Eastern District of Texas and the Western District of Texas; said railroads being described as follows, to-wit:

All and singular the lines of railroad in the State of Texas formerly belonging to the International and Great Northern Railroad Company, extending from the town of Longview, in the County of Gregg in said State, through said county and through the Counties of Rusk, Smith, Cherokee, Anderson, Leon, Robertson, Milam, Williamson, Travis, Hays, Comal, Bexar, Medina, Frio, La Salle, Encinal and Webb, to La-

redo in said last mentioned county; and from the town of Mineola, in Wood County, to Troupe, in Smith County; and from the City of Palestine, in Anderson County, through the Counties of Houston, Trinity, Walker and Montgomery to Houston, in Harris County; and from the town of Spring, in Harris County, through the Counties of Montgomery, Waller, Grimes, Brazos, Robertson, Falls, McLennan, Limestone, Hill, Navarro, Ellis and Johnson to the City of Fort Worth, Tarrant County; with branches and branch lines from the town of Overton to the town of Henderson, in Rusk County, from the town of Round Rock to Georgetown, in Williamson County, from the town of Phelps to the town of Huntsville, in Walker County, from the City of Houston, in Harris County, to the town of Columbia, in Brazoria County, from Navasota, in Grimes County, to Madisonville, in Madison County, from Calvert Junction to Calvert, in Robertson County, and from Waco Junction to East Waco, in McLennan County; including also the railway and railway tracks and property appurtenant thereto, and certain tracts of land in and adjacent to the City of Houston, in Harris County, known as the Houston Belt Terminals; a total distance of about eleven hundred and six (1106) miles; and including also the trackage rights formerly belonging to said International and Great Northern Railroad Company from Houston, in Harris County, to Galveston, in Galveston County, Texas, over the railroad of the Galveston, Houston and Henderson Railroad Company of 1882, under an agreement between said railroad companies dated November 19, 1895.

This corporation shall have all of the powers and privileges conferred by the laws of the State of Texas upon chartered railroads, including the power to construct and extend.

**THIRD.** The place at which shall be established and

maintained the principal business office, the public office and general offices of this corporation is the City of Houston, in Harris County, State of Texas.

FOURTH. The time of the commencement of this corporation shall be the date of the filing of these articles in the office of the Secretary of State of the State of Texas, and the period of the continuation of this corporation shall be fifty (50) years from the time of its commencement.

FIFTH. The amount of the capital stock of this corporation shall be Eleven Million Five Hundred Thousand Dollars (\$11,500,000).

SIXTH. The names and places of residence of the several persons forming the association for incorporation are as follows:

Name.	Residence.
Frank C. Nicodemus, Jr. ....	New York City, N. Y.
Horace Booth. ....	Palestine, Texas.
Willis H. Cope. ....	Houston, Texas.
Samuel B. Dabney. ....	Houston, Texas.
Thomas J. Freeman. ....	Houston, Texas.
Alfred R. Howard. ....	Palestine, Texas.
Frank T. Richardson. ....	Houston, Texas.
William L. Maury. ....	Palestine, Texas.
Milton L. Morris. ....	Houston, Texas.
Dougald J. Price. ....	Palestine, Texas.

SEVENTH. The names of the members of the first Board of Directors of this corporation are as follows:

Horace Booth.	Alfred R. Howard.
Willis H. Cope.	Frank T. Richardson.
Samuel B. Dabney.	William L. Maury.
Thomas J. Freeman.	Milton L. Morris.

Dougald J. Price.

The government of this corporation and the management of its affairs shall be vested in a board of directors composed of nine persons: a president, one or more vice-presidents and such other officers and agents as this corporation by its by-laws may prescribe.

EIGHTH. The number and amount of the shares of the capital stock of this corporation shall be one hundred and fifteen thousand shares, of the par value of \$100 each.

Of such capital stock fifty thousand shares shall be issued as preferred stock, and sixty-five thousand shares shall be issued as common stock, but the amount of preferred or common stock, or both, may be increased from time to time in the manner provided by the laws of the State of Texas.

No dividends shall be paid in any fiscal year upon the common stock of this corporation until and unless dividends to the amount of five per cent. for the same fiscal year shall have been set apart for or paid upon the preferred stock of this corporation; but such dividends on the preferred stock shall be non-cumulative. After the payment or the setting apart in any one fiscal year of dividends upon the preferred stock to the amount of five per cent., no further dividends in the same fiscal year shall be set apart for or paid upon the preferred stock until and unless dividends to the amount of five per cent. for the same fiscal year shall be set apart for or paid upon the common stock; but after dividends to the amount of five per cent. in any one fiscal year shall have been set apart for or paid upon both preferred stock and common stock, all stock, without priority or distinction as between the different classes thereof, shall share *pro rata* in any further dividends for that year.

In the event of any liquidation, dissolution or winding up (whether voluntary or involuntary) of this corporation, the holders of the preferred stock shall be entitled to be paid in full, out of the assets of this corporation, the par amount of their shares and all dividends thereon declared and unpaid, before any amount shall be paid out of said assets to the holders of the common stock; but, after payment in full to the holders of the common stock of the par amount of their common stock and all dividends thereon declared and unpaid, holders of both classes of stock, without priority or distinction as be-

tween the different classes thereof, shall be entitled to participate, *pro rata*, in the assets of this corporation.

WITNESS our hands this 8th day of August, A. D. 1911.

FRANK C. NICODEMUS, JR.,  
HORACE BOOTH,  
WILLIS H. COPE,  
SAMUEL B. DABNEY,  
THOMAS J. FREEMAN,  
ALFRED R. HOWARD,  
FRANK T. RICHARDSON,  
WILLIAM L. MAURY,  
MILTON L. MORRIS,  
DOUGALD J. PRICE.

STATE OF TEXAS,  
COUNTY OF HARRIS.—SS.:

Before me, H. B. Mansfield, a notary public in and for the aforesaid State and County duly qualified, personally appeared Frank C. Nicodemus, Jr., Horace Booth, Willis H. Cope, Samuel B. Dabney, Thomas J. Freeman, Alfred R. Howard, Frank T. Richardson, William L. Maury, Milton L. Morris and Dougald J. Price, known to me to be all of the persons whose names are subscribed to the foregoing instrument, and each acknowledged to me that he executed the same for the purposes and considerations therein contained and expressed.

Given under my hand and seal of office this 8th day of August, A. D. 1911. My commission expires May 31st, 1913.

(SEAL)

H. B. MANSFIELD,  
Notary Public.

STATE OF TEXAS,  
COUNTY OF HARRIS.—SS.:

Before the undersigned authority, within and for said County and State, on this day came and personally appeared Thomas J. Freeman, Alfred R. Howard and William L. Maury, three of the directors named in the foregoing and attached Articles of Incorporation of International and Great Northern Railway Company, all of

whom are personally known to me, and who being by me severally sworn, as the law provides, on their oaths, severally depose and say that the amount of One Thousand Dollars (\$1,000) per mile for every mile of road of said Company has been in good faith subscribed, that five per cent. (5%) of the amount subscribed has been actually paid to the directors named in said Articles of Incorporation, and that the corporators named in said Articles are all subscribers to said capital stock.

THOMAS J. FREEMAN,  
ALFRED R. HOWARD,  
WILLIAM L. MAURY.

Subscribed and sworn to before me, at my office in the City of Houston, Harris County, Texas, this 8th day of August, A. D. 1911. My commission expires May 31st, 1913.

H. B. MANSFIELD,  
*Notary Public.*

(SEAL)

ATTORNEY GENERAL'S OFFICE,  
Austin, Texas, August 10th, 1911.

CERTIFICATE.

This is to certify that the original Articles of Incorporation of International and Great Northern Railway Company were submitted to me on the 10th day of August, 1911, and having carefully examined the same I find them in accordance with the provisions of Chapter 1 of Title 94 of the Revised Statutes of Texas and any and all amendments thereto, and not in conflict with the laws of the United States or of the State of Texas.

J. P. LIGHTFOOT,  
*Attorney General.*

Filed in the office of the Secretary of State this 10th day of August, 1911.

C. C. McDONALD,  
*Secretary of State.*

DEPARTMENT OF STATE.

I, John L. Wortham, Secretary of State of the State of Texas, do hereby certify that the foregoing is a true copy of the charter of International & Great Northern Rail-

way Company, with the endorsements thereon, as now appears of record in this Department, in Book G, pages 265-6-7 and 8, Record of Railroad Charters.

In testimony whereof I have hereunto signed my name officially and caused to be impressed hereon the Seal of State at my office in the City of Austin, Texas, this the 20th day of January, A. D. 1913.

JOHN L. WORTHAM,  
*Secretary of State.*

(SEAL)

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**ORDER.**

Anderson County, et al.,  
No. 8589.                      vs.  
International and Great Northern Railway  
Company.

In the District Court of Anderson County, Texas.

On this the 7th day of July, 1913, coming on to be heard before the District Court of Anderson County, Texas, the plea of personal privilege of the defendant International and Great Northern Railway Company, which is contained in its original answer filed in this cause on April 24th, 1912; and evidence being introduced in support of said plea of personal privilege, and said plea and evidence being duly considered by the Court, it is ordered and adjudged by the Court that said plea of personal privilege be and the same is hereby overruled, to which ruling of the Court the defendant in open court excepts.



**BILL No. 1.**

Anderson County, et al.,  
No. 8589                      vs.  
International & Great Northern Railway  
Company.

In the District Court of Anderson County, Texas, July  
Term, A. D. 1913.

Be it remembered that on this the 7th day of July, A. D. 1913, the defendant's plea of personal privilege filed in this Court heretofore in due order of pleading, and which has not been waived, came on to be heard in its regular order, and after being duly presented to the Court and being duly certified by affidavit as required by law, and being in due form, the defendant, in support thereof, introduced the following evidence:

**FIRST.**

A duly certified copy of the Charter of the International & Great Northern Railway Company, filed in the office of the Secretary of State on the —— day of August, A. D. 1911. The said charter, among other things, designated the general offices and headquarters of said Railway Company at Houston, Harris County, Texas.

**SECOND.**

It is admitted by both parties as a fact that on the 1st day of September, A. D. 1911, the general manager, general freight agent, general auditor, general claim agent and all other general officers of the defendant company, except those specially excepted in plaintiff's petition, removed to the City of Houston, in Harris County, Texas, taking with them all the books of their respective offices, as well as their subordinates and employes, and that from and since said date they have continuously transacted the business of their respective offices in the City of Houston, Harris County, Texas, and have not since said date transacted their business in the City of Palestine, Anderson County, Texas.

And be it further remembered that no ~~contest~~ <sup>other evidence</sup> was presented against said plea and that the Court after duly considering said plea of personal privilege and all the evidence introduced as aforesaid, overruled said plea to which ruling of the Court the defendant then and there in open Court excepted and here and now tenders this its bill of exceptions.

WILLIAMS & STEDMAN,  
WILSON, DABNEY & KING,  
ANDREWS, BALL & STREETMAN,  
N. B. MORRIS,  
*Attorneys for Defendant.*

Approved:

PRINCE, *District Judge Presiding.*  
July 7, 1913.

**Motion to change venue see  
pp. 621-623 herein below.**

#### ORDER GRANTING CHANGE OF VENUE.

Anderson County, et al.,  
No. 8589.                      vs.  
International & Great Northern Railway  
Company.

In the District Court of Anderson County, Texas.

On this the 7th day of July, 1913, coming on to be heard before the District Court of Anderson County, Texas, the application, filed herein on this day, of the defendant the International and Great Northern Railway Company for a change of venue in this cause; and it appearing to the Court that said application is in conformity to the requirements of the statute regulating the change of venue in civil causes, and is properly supported by the affidavit of the defendant and also by the affidavit of three credible persons, residents of the County of Anderson; and there being no contest of said application and there

being no attack upon the credibility of the persons making the application for a change of venue, or their means of knowledge or the truth of the facts set out in said application, it is therefore ordered and adjudged by the Court that said application for a change of venue be and the same is hereby granted. And it appearing to the Court that the court house of Cherokee County, at Rusk, the county seat of that county, is nearest to the court house of Anderson County, at Palestine, in that county; and no objections appearing to the change of venue to Cherokee County, it is ordered and adjudged by the Court that by virtue of the change of venue as aforesaid this cause shall be removed to Cherokee County for trial. It is further ordered and adjudged by the Court that the Clerk of this Court shall immediately make out a correct transcript of all the orders in this cause, certifying there-to officially under the seal of this Court, and transmit the same, with the original papers in the cause, to the Clerk of the District Court of Cherokee County, to which the venue of this cause is changed by this order.

By agreement of counsel in this cause it is ordered that this cause shall stand for trial in the District Court of Cherokee County at the term beginning on the 1st day of December, 1913.

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**FIRST AMENDED PETITION, FILED JANUARY 7, 1914.**

THE STATE OF TEXAS,  
COUNTY OF CHEROKEE.

In District Court, November Term, 1913.

*To the Honorable Judge of the District Court of Cherokee County, Texas:*

The first amended original petition of Anderson County, and of the City of Palestine, and of Geo. A. Wright,

J. W. Ozment, A. L. Bowers, Jno. R. Hearne, Z. L. Robinson, E. W. Link, R. C. Sewell, Jno. M. Colley and P. H. Hughes, citizens of the City of Palestine, Texas, who sue herein in behalf of themselves and of all other citizens of said City of Palestine, styled herein plaintiffs, amending their original petition filed on the 7th day of February, 1912, leave of the court first being had, complaining of the International & Great Northern Railway Company, styled herein defendant, would respectfully show to the court:

(1) That Anderson County is, and has been since prior to the 1st day of March, 1872, a body corporate and politic, created and organized as a county by the Legislature of the State of Texas.

(2) That the City of Palestine is a municipal corporation, duly incorporated and chartered as a city of over ten thousand inhabitants by special act of the Legislature of Texas, approved on the 19th day of March, 1909, and is the successor of the City of Palestine, duly incorporated under the laws of Texas as a municipal corporation, since prior to the 1st day of March, 1872.

(3) That each of the plaintiffs, Geo. A. Wright, J. W. Ozment, A. L. Bowers, Jno. R. Hearne, Z. L. Robinson, E. W. Link, R. C. Sewell, Jno. M. Colley and P. H. Hughes, resides in the City of Palestine, in the County of Anderson, and State of Texas, and each of them is a citizen of said city and the owner of real and personal property in said city. That each of the last named plaintiffs has resided in said City of Palestine, and has been the owner of real and personal property therein since long prior to the 1st day of September, 1911; and the plaintiffs Geo. A. Wright, J. W. Ozment and E. W. Link have been such resident citizens and property owners since prior to the 1st day of March, 1872.

(4) That the citizens of the City of Palestine are numerous, aggregating in number some twelve thousand, and they have a joint and common interest in having the general offices, machine shops and round houses of the

International & Great Northern Railroad kept and maintained, by the defendant, at Palestine. That it is impracticable to make all of said citizens parties to this suit, in their own proper persons, and hence this suit is brought by the individually named plaintiffs, in behalf of each and all other citizens of said city, as well as in behalf of themselves.

(5) That the defendant International & Great Northern Railway Company is a corporation, organized under the laws of Texas as hereinafter shown, and required by law to keep and maintain its general offices at the City of Palestine, in the County of Anderson, Texas.

(6) That on the 22nd day of October, 1866, the Legislature of Texas, by an act entitled "An Act to incorporate the Houston & Great Northern Railroad Company" created and chartered that company, and authorized it to construct, own, maintain and operate a railroad, commencing at the City of Houston and running northward to Red River. That said act authorized said company to form a junction and connection with any other road in such manner as would best secure their construction.

(7) That on the 5th day of August, 1870, the Legislature of Texas, by an act entitled "An Act to incorporate the International Railroad Company and provide for the aid of the State of Texas in construction of same" created and chartered that company, and authorized it to construct, own, maintain and operate a railroad from such point on Red River as nearly opposite to the town of Fulton, in the State of Arkansas, as might be found expedient in forming a junction with the railway known as the "Cairo & Fulton Railway," then being constructed, by the most practicable route across the State of Texas, by way of Austin and San Antonio, to the Rio Grande River, at such point at or near Laredo as might be selected by the company. That said act authorized the International Railroad Company to connect itself with any other railroad company, within or without the State, and to operate and maintain its railroad in connection or in

consolidation with any other railroad company, as it might deem best; and said act provided that the principal office of said company should be established at such point on the line of said railroad as might be deemed most convenient for the transaction of its business, and might be moved from time to time to such places on the line as the progress of the work of construction might render expedient or necessary.

(8) That, acting under said act of August 5th, 1870, the International Railroad Company had, prior to the 15th day of March, 1872, constructed a portion of its line of railroad from, at or near the town of Hearne, in Robertson County, Texas, to the City of Palestine, in Anderson County, Texas, and was regularly operating said line of railroad, as a common carrier of freight and passengers for hire, and was maintaining a depot at said City of Palestine.

(9) That heretofore, to-wit, on or about the 15th day of March, 1872, the Houston & Great Northern Railroad Company had constructed, or had determined to construct, under its charter, its line of railroad from the City of Houston northward to the north boundary line of Houston County, Texas; and, on or about said date, said Houston & Great Northern Railroad Company, acting by its duly authorized president, Galusha A. Grow, contracted and agreed, in Anderson County, Texas, with the citizens of the City of Palestine, Texas, acting by and through Judge John H. Reagan, to extend its said line of railroad from the north boundary line of Houston County, to intersect the line of the International Railroad Company at Palestine, and to establish a depot within one-half of the court house at Palestine, and to commence running cars regularly thereto by the 1st day of July, 1873, and to thereupon locate and establish, and forever thereafter keep and maintain the general offices, machine shops and round houses of the Houston & Great Northern Railroad at the City of Palestine, for and in consideration of the promise and agreement then made,

upon the part of the said Judge John H. Reagan, to make a thorough canvass of Anderson County, to induce the electors thereof to authorize, by their votes, the issuance of the interest bearing bonds of said county in the principal sum of \$150,000, and, for and upon the further consideration that Anderson County, on authorization of its electors, in the manner prescribed by law, should issue and deliver to the Houston & Great Northern Railroad Company its interest bearing bonds in said principal sum of \$150,000, upon the completion of said railroad to its intersection with the International Railroad at Palestine, and upon the establishment of a depot within a half mile of the court house, and upon the commencement of the running of cars regularly to such depot.

(10) That if said contract did not expressly name the citizens of Palestine as parties thereto (as plaintiff expressly aver it did), yet the same was made for their benefit and in their behalf, and such citizens, at that time and throughout the future, including the plaintiffs, were the parties intended, by both Judge John H. Reagan and the Houston & Great Northern Railroad Company, as the parties to be benefited by the performance of all the obligations of the Railroad Company under said contract, and especially of those obligations which related to the location and maintenance of general offices, machine shops and round houses at Palestine.

(11) That the above mentioned contract, and especially the promise to establish and forever maintain said general offices, machine shops and round houses at Palestine, was made and entered into by the Houston and Great Northern Railroad Company as an inducement to Anderson County and the electors thereof to donate to said Houston & Great Northern Railroad Company the bonds of said county in the principal sum of \$150,000, and it was in reliance upon, and in consideration of, such inducement, contract and promise that said bonds were subsequently authorized and delivered to said Railroad Company.



(12) That in order to induce the electors of Anderson County to authorize the issuance and delivery to the Houston & Great Northern Railroad Company of the interest bearing bonds of Anderson County, in the principal sum of one hundred fifty thousand dollars, which bonds are hereinafter more fully described, the Houston & Great Northern Railroad Company, acting by its duly authorized president, Galusha A. Grow, and by other duly authorized agents, on or about the 15th day of March, 1872, and on or about the last days of April, 1872, and on or about the first days of May, 1872, and throughout the time from about the 15th day of March, 1872, to the 4th day of May, 1872, promised, agreed, and represented, unto and with Anderson County, and the electors thereof, that the general offices, machine shops and round houses of the Houston & Great Northern Railroad, upon the completion of said railroad to Palestine, would be established and forever thereafter maintained at Palestine, in Anderson County, Texas, and further, that said company was firmly bound by valid contract, with the citizens of Palestine to so establish and maintain said general offices, machine shops and round houses.

(13) That said contract, promises, agreements and representations were deliberately authorized and made by the Houston & Great Northern Railroad Company, with the intention that the electors of Anderson County should act and rely upon same. That the electors of Anderson County were induced, by said contract, promises, agreements and representations, to authorize, and therefore did authorize, by their votes, at an election held in said county on the first, second, third and fourth days of May, 1872, the issuance and delivery to the Houston & Great Northern Railroad Company of the interest bearing bonds of Anderson County, for the principal sum of One Hundred and Fifty Thousand Dollars (\$150,000), payable in twenty years from their date, with interest at the rate of eight per cent per annum from their date, as per coupons to be attached, the interest and two per cent

of the principal to be paid on the first day of January of each year, said bonds to be issued and delivered upon the completion of said railroad to an intersection with the International Railroad at Palestine, and upon the establishment of a depot within a half mile of the court house at Palestine, and upon the commencement of the regular running of cars by said company to such depot. That said electors would not have authorized the issuance and delivery of said bonds, nor the offer of same to the Houston & Great Northern Railroad Company, but for the inducement of the above mentioned contract, promises, agreements and representations, by the company, that it would establish and forever maintain general offices, machine shops and round houses at Palestine, and that it was under a binding contract with the citizens of Palestine so to do, nor but for the fact that the electors relied and acted upon such contract, promises, agreements and representations.

(14) That the said Judge John H. Reagan made a thorough canvass of Anderson County between about the 15th day of March, 1872, and the 4th day of May, 1872, to induce the electors of Anderson County to vote to authorize the issuance of said bonds, in strict conformity with his promise to, and agreement with, the Houston & Great Northern Railroad Company and its president, as hereinbefore alleged.

(15) That said election was held under and by virtue of a proper order of the Commissioners' Court of Anderson County, Texas, and subsequently on the 6th day of May, 1872, an order was entered in said court declaring that more than two-thirds of the qualified voters of Anderson County had voted in favor of the issuance of said bonds.

(16) That prior to the 31st day of December, 1872, the Houston & Great Northern Railroad Company completed its railroad from the north boundary of Houston County to its intersection with the International Railroad at Palestine, and built a depot within one-half mile

of the court house at Palestine, and commenced to run its cars regularly thereto, and thereafter, on or about the 29th day of January, 1873, said company, by its president, Galusha A. Grow, applied to the Commissioners' Court of Anderson County for the interest bearing bonds of said county in the principal sum of \$150,000, as hereinbefore described and as authorized by the electors of said county; and in order to induce the Commissioners' Court of Anderson County to issue and deliver said bonds, the said Houston & Great Northern Railroad Company, acting by its duly authorized president, Galusha A. Grow, again promised, agreed and represented unto said county and said Commissioners' Court that the company had already begun to establish and would thereafter forever maintain its general offices, machine shops and round houses at Palestine, as required by its contract with the citizens of Palestine; and, acting on said promise, agreement and representation, and relying on same, as well as on the previous contract, promises, agreements and representations of said company, as hereinbefore set out, and in part performance of said contract between the Houston & Great Northern Railroad Company and the citizens of Palestine, the said Commissioners' Court was induced to issue and deliver, and on or about the 29th day of January, 1873, did issue and deliver unto the Houston & Great Northern Railroad Company the interest bearing bonds of Anderson County, as theretofore authorized by the electors, bearing date as of Dec. 31st, 1872, for the principal sum of \$150,000, in denominations of \$500 each, payable in twenty years from their date, with interest from their date at the rate of eight per cent per annum, as per coupons attached, the interest and two per cent of the principal payable on the 1st day of January of each year, commencing Jan. 1st, 1874.

(17) That if the president of the Houston & Great Northern Railroad Company and the other agents of said company were not expressly authorized by it to make the contracts, promises, agreements and representations

hereinbefore alleged (as plaintiffs expressly aver they were), yet the said Houston & Great Northern Railroad Company was nevertheless bound thereby; for plaintiffs aver that the said Houston & Great Northern Railroad Company, with full knowledge of the facts hereinbefore plead, acquiesced in, approved and ratified each and all of the aforesaid contracts, promises, agreements and representations of its said president, and of its other agents, with the intention to adopt same and to be bound thereby, and, with such knowledge, obtained and accepted the services of Judge John H. Reagan, as above shown, and obtained, accepted and retained the above mentioned bonds of Anderson County, as well as the proceeds thereof, and this plaintiffs are ready to verify.

(18) That on or about the 19th day of February, 1872, the International Railroad Company and the Houston & Great Northern Railroad Company, acting by their respective presidents, entered into certain written "Articles of Agreement," whereby it was provided that the railroads, properties, rights, franchises, powers and capital stock of the two companies should be united, consolidated and merged, under the name of the International and Great Northern Railroad Company, on authorization of the holders of three-fourths of the outstanding stock of the respective companies, and, in the meantime the railroads, properties, rights, franchises and powers of the two companies were to be managed, operated and exercised by their respective boards of directors or by the joint action of the two boards, all earnings to belong, however, to the united company. That in September, 1873, said union, consolidation and merger was duly approved by the stockholders of the respective companies, and the same were also approved, ratified and confirmed by the Legislature of the State of Texas, by acts approved, respectively, on the 24th day of April, 1874, and on the 10th day of March, 1875.

(19) That by Section 2, of the Act of April 24th, 1874, it was expressly provided that all acts theretofore

done in the name of either of said companies should have the same binding force and effect upon the International & Great Northern Railroad Company that they had upon the respective companies.

(20) That the Houston & Great Northern Railroad Company, and the International and Great Northern Railroad Company (as formed by the consolidation agreement aforesaid), in part performance of the aforesaid contracts, promises and agreements, and in compliance therewith, promptly established the machine shops and round houses of the Houston and Great Northern Railroad and of the International and Great Northern Railroad, at Palestine, Texas, and thereafter, until the 13th day of September, 1911, and for a period of nearly forty years, the machine shops and round houses of the Houston and Great Northern Railroad, and of the International and Great Northern Railroad, in further performance of said contracts, promises and agreements, were continuously maintained, by the Houston and Great Northern Railroad Company and by the International and Great Northern Railroad Company, at Palestine, Texas, where the same have also been, and now are, maintained by the International and Great Northern Railway Company.

(21) That heretofore, to-wit: On or about the first of the year 1875 (plaintiffs being unable after this lapse of time to more definitely fix the date), the International & Great Northern Railroad Company, acting by its duly authorized general manager, or general superintendent, H. M. Hoxie, contracted and agreed with the citizens of the City of Palestine, Texas, among whom were the plaintiffs Geo. A. Wright and J. W. Ozment, to fully and completely perform the promises, contracts and agreements of the Houston & Great Northern Railroad Company, or the promises, contracts and agreements which the said Galusha A. Grow had undertaken to make in behalf of said company with said citizens and with Anderson County and with the electors of said county, by at

once locating the general offices of the International & Great Northern Railroad at Palestine, and by thereafter forever keeping and maintaining the general offices, machine shops and round houses of said International & Great Northern Railroad at Palestine, for and in consideration of the bonds theretofore issued by Anderson County to the Houston & Great Northern Railroad Company, and for the further additional consideration that said citizens should at once construct and complete, or cause to be constructed and completed, at their own cost and expense, any and all houses, at Palestine, Texas, which might be demanded by the International & Great Northern Railroad Company, in accordance with such plans or specifications or directions as might be furnished by the company, through its officers, for occupancy, at reasonable rentals, by employees of said company and their families, and especially by general officers of said company, their families and clerks.

(22) That the citizens of Palestine, as required by said contract and agreement, did at once, in the early part of the year 1875, construct and complete, and cause to be constructed and completed, at their own cost and expense, amounting to many thousands of dollars, each and all of the houses, at Palestine, Texas, which were demanded by the International & Great Northern Railroad Company, and by its officers, numbering more than twenty, in accordance with the plans and directions furnished by the company and its officers, for occupancy, at reasonable rentals, by the employees of said company and their families and clerks, to the entire satisfaction of the International & Great Northern Railroad Company; and, that among the houses so constructed and completed or caused to be so constructed and completed by said citizens, were the following, to-wit: a residence constructed and completed on Lot 15, of Larkin & Campbell's Addition to the City of Palestine, Texas, by the Palestine Land and Building Company, a corporation organized under the laws of Texas, with its place of business at Pal-



estine, Texas, with its capital stock owned by many citizens of Palestine; a residence constructed and completed by remodeling and reconstructing the former Reeves home, on Lot 14, of Larkin & Campbell's Addition to the City of Palestine, Texas, by said Palestine Land and Building Company; a residence on the west half of Lot 13 of Larkin & Campbell's Addition to the City of Palestine, Texas, by said Palestine Land and Building Company; three residences on Lot 4 of Larkin & Campbell's Addition to Palestine, Texas, by said Palestine Land and Building Company; a residence on Lot 2, in Block 11, of the City of Palestine, by said J. W. Ozment; a residence on part of Block 89 of the City of Palestine, Texas, by said J. W. Ozment; and two residences on Lot 5 of Larkin & Campbell's Addition to the City of Palestine, by Geo. A. Wright and J. E. Whiteselle, who were both citizens of said city; that owing to the lapse of nearly thirty-nine years these plaintiffs are unable to state with any greater particularity the location of other houses and by whom constructed, under the terms of said contract, but they aver that said Railroad Company accepted the buildings which were constructed, and the work which was done and caused to be done by said citizens as in full and complete and perfect performance of said contract, as in truth and in fact such buildings and work did fully and completely comply with every obligation of said citizens under said contract; and thereupon the said International & Great Northern Railroad Company became bound, by its aforesaid contract and agreement (as well as by the previous contract and agreement of one of its constituents), to forever keep and maintain the general offices, machine shops and round houses of the International & Great Northern Railroad at Palestine.

(23) That if the general manager or general superintendent of the International & Great Northern Railroad Company, H. M. Hoxie, was not expressly authorized by said company, to make the contract and agreement hereinbefore set out, which he did make, in behalf



of said company with the citizens of Palestine (as plaintiffs expressly aver he was), yet the International & Great Northern Railroad Company was nevertheless bound thereby; for plaintiffs aver that said company, with full knowledge of said contract and agreement, acquiesced in, approved and ratified same, with the intention to adopt it and be bound thereby, and, with full knowledge, said company accepted the benefits of the expenditures made by the citizens of Palestine in the construction of houses for its employees as above shown; and, in performance of its obligations under said contract and agreement, the International & Great Northern Railroad Company did immediately, and in the early part of the year 1875, locate and establish the general offices of the International & Great Northern Railroad at Palestine, and did thereafter continuously maintain such general offices, at Palestine, until the 1st day of September, 1911; and, in compliance with the aforesaid contract and agreement, the International & Great Northern Railroad Company and the International & Great Northern Railway Company have continuously maintained the machine shops and round houses of the International & Great Northern Railroad at Palestine from the date of said contract and agreement to the present time.

(24) That under the laws of Texas, the International & Great Northern Railroad Company had, prior to the 9th day of May, 1911, become the owner of 1106 miles of railroad, extending from Palestine to Houston; from Longview, via Palestine, to Laredo; and from Spring to Fort Worth; with several branches, spurs and terminals and had also become the owner of trackage rights over 53.5 miles of railroad, including the Galveston, Houston & Henderson Railroad, from Houston to Galveston, together with the franchise to operate said 1106 miles of railroad and said 53.5 miles of railroad, as a common carrier of freight and passengers for hire, and had become the owner of valuable equipment and other property, connected with said lines of railroad and the oper-

ation thereof. That said railroads, franchises, equipment and other property were owned and held by the International & Great Northern Railroad Company, on said 9th day of May, 1911, subject to the lien of a mortgage, of date Nov. 1st, 1879, securing bonds in the principal sum of \$11,291,000; and also subject to the lien of a mortgage, on specific property, securing certain bonds known as Colorado River bridge bonds, in the principal sum of \$198,000, and also subject to the lien of a mortgage, on specific property, securing a loan upon the company's San Antonio station in the principal sum of \$42,000, and also subject to a lien on certain equipment for the principal sum of \$392,650, and also subject to the lien of a mortgage, of date March 1st, 1892, securing bonds in the principal sum of \$2,966,052.50, besides interest, and also subject to a valid subsisting judgment and decree of foreclosure, against the International and Great Northern Railroad Company, of the lien of a mortgage, dated June 15th, 1881, for the sum of \$12,165,545.60, with six per cent per annum interest from May 10th, 1910, said judgment and decree of foreclosure providing that said railroads, franchises, equipment and the other property of said Railroad Company should be sold subject to the lien of the mortgage of date Nov. 1st, 1879, and also subject to the lien of the mortgage securing said Colorado River bridge bonds, and subject to the lien of the mortgage securing said loan on the San Antonio station, and also subject to the lien on said equipment, but not providing that said railroads, franchises, equipment and other property should be sold subject to the lien of said mortgage of date March 1st, 1892, though the trustee under the mortgage of date March 1st, 1892, was a party to said judgment and decree of foreclosure, and though such trustee, and the holders of the bonds secured by said mortgage of date March 1st, 1892, were bound by said judgment and foreclosure.

(25) That said railroads, franchises, equipment and other property of the International & Great Northern

Railroad Company were sold by a master commissioner appointed by said court, under the aforesaid judgment and decree of foreclosure, on the 13th day of June, 1911, when one Frank C. Nicodemus, Jr., of New York, bid in and purchased said railroads, franchises and equipment and other property for the sum and price of twelve million six hundred and forty-five thousand dollars (\$12,645,000), and the bid of said Frank C. Nicodemus, Jr., was thereafter, on June 14, 1911, duly accepted and confirmed by the court rendering said judgment and decree of foreclosure.

(26) That thereafter, on or about the 10th day of August, 1911, the said Frank C. Nicodemus, Jr., and certain nominal associates, filed in the office of the Secretary of State of the State of Texas a certain charter forming a corporation, under Art. 4550, of Chapter 11, of Title 94, of the Revised Civil Statutes of Texas, as amended by the Act of the Legislature of Texas, approved September 1st, 1910, under the name of the "International & Great Northern Railway Company," for the purpose of acquiring, owning, maintaining and operating the railroads theretofore forming the International & Great Northern Railroad, with an authorized capital stock of \$11,500,000, divided into 115,000 shares, of the par value of \$100 each, of which 50,000 shares should be preferred stock and 65,000 shares should be common stock, and thereby was created the defendant International & Great Northern Railway Company.

(27) That subsequent to the filing of said charter, and on or about the 13th day of September, 1911, the said purchaser, Frank C. Nicodemus, Jr., complied with his bid of \$12,645,000 for said railroads and other property, and thereupon, by direction of said purchaser, and in accordance with an assignment of his bid, and with the approval of the court, decreeing and confirming the sale, the railroads forming the International & Great Northern Railroad, and all appurtenant property, franchises and equipment, by said master commissioner, were con-

veyed unto said new corporation, the defendant International & Great Northern Railway Company. That the International & Great Northern Railroad Company joined in said conveyance, in confirmation of said sale.

(28) That thereafter, on the 25th day of September, 1911, the court ordering and decreeing the sale of said Railroad and appurtenant property, franchises and equipment made and entered a final order and decree approving the Final Report of the master commissioner making said sale, and confirming his deed of conveyance to the International and Great Northern Railway Company, and forever and finally discharging all the railroads, franchises and properties of the International and Great Northern Railroad Company from the possession, custody and control of said court.

(29) That the said Frank C. Nicodemus, Jr., had full and actual knowledge and notice of the facts herein plead, and of every right herein asserted, prior to the time that he bid in the International & Great Northern Railroad, with its appurtenant property, franchises and equipment, and the defendant has had such actual knowledge and notice, from the time of its organization to the present time. That plaintiffs gave formal, written notice of the causes of action herein alleged unto said purchaser in advance of his bidding for said railroad and appurtenant property, franchises and equipment, and in advance of compliance with his bid, and this plaintiffs are ready to verify.

(30) That since the Houston & Great Northern Railroad Company contracted and agreed to locate, keep and maintain the general offices, machine shops and round houses of the Houston & Great Northern Railroad at the City of Palestine, for a valuable consideration received, and since the International & Great Northern Railroad Company contracted and agreed to locate, keep and maintain the general offices, machine shops and round houses of the International & Great Northern Railroad at the City of Palestine, for a valuable consideration received,

and since the general offices, machine shops and round houses of the Houston & Great Northern Railroad and of the International & Great Northern Railroad have been located at the City of Palestine, in Anderson County, Texas, which county has aided said Houston & Great Northern Railroad and said International & Great Northern Railroad, by an issue of bonds, in consideration of such location being made; and since no certain place was named in the charter of the International & Great Northern Railroad Company where its general offices should be located and maintained, the laws of Texas, on the 1st day of September, 1911, and continuously afterwards to the present time, imposed, and do now impose, upon the International & Great Northern Railway Company the performance of the public and statutory duty, enuring to plaintiffs' special benefit, to keep and maintain the general offices, machine shops and round houses of the International & Great Northern Railroad at the City of Palestine, in Anderson County; and, the State of Texas, by general law, expressly forbade and prohibited, and still forbids and prohibits, any change, from the said city, in the location of said general offices, machine ships and round houses. That the International & Great Northern Railroad Company, prior to the sale of its railroad and other property, was not only bound by contract, but was bound by general law, as a part of its duty to the public, coupled with the enjoyment of its corporate franchises, to keep and maintain the general offices, machine shops and round houses of said railroad, at the City of Palestine, and such duty and regulation of its franchises could not be, and was not, impaired nor discharged by the sale of said Railroad, with its appurtenant property and franchises, and the organization of defendant to operate said Railroad under said franchises.

(31) That the general offices, maintained at the City of Palestine, for the operation of the International & Great Northern Railroad (whether by the Company, or by Receivers), for years prior to the 1st day of Septem-

ber, 1911, included that of Vice President, Secretary, Treasurer, Auditor, General Freight Agent, General Manager, General Superintendent, General Passenger and Ticket Agent, Chief Engineer, Superintendent of Motive Power and Machinery, Master Mechanic, Master of Transportation, Fuel Agent, and General Claim Agent.

(32) That in wilful disregard of its contract obligations unto plaintiffs, and in open and flagrant violation of the laws of the State of Texas, the defendant, International & Great Northern Railway Company, on or about the 1st day of September, 1911, undertook to change the location of all its general offices, except that of Superintendent of Motive Power and Machinery, and that of Master Mechanic, from the City of Palestine to the City of Houston, Texas, and undertook to establish the most important general office of its Traffic Manager without the State of Texas, in the City of New Orleans, in the State of Louisiana; and, in seeking to accomplish such changes, the defendant has caused the Vice President and General Manager, Secretary, Treasurer, Auditor, General Freight Agent, General Superintendent, General Passenger and Ticket Agent, Chief Engineer, Master of Transportation, Fuel Agent, and General Claim Agent, with their respective subordinates, engaged in the operation of the International & Great Northern Railroad, to remove to the City of Houston, in Harris County, Texas, and to there establish so-called general offices, from which their respective duties are performed; and the defendant has caused the Traffic Manager, for the International & Great Northern Railroad, together with his subordinates, to establish an office at New Orleans, La., from which their duties are performed.

(33) That plaintiffs were advised that the defendant had declared the purpose to change from the City of Palestine the location of the general offices of said Superintendent of Motive Power and Machinery, and of said Master Mechanic, and to change the location of the machine shops and round houses of said railroad, as actually



operated, immediately upon the institution of this suit, or of any suit of a like nature; and, the defendant will make the aforesaid changes, in further violation of law, unless prevented by the restraint of the writ of injunction.

(34) That acting upon the faith and credit of the contracts and agreements hereinbefore plead, and in reliance thereon, the plaintiffs have acquired property rights in the City of Palestine worth many hundreds of thousands of dollars.

(35) That plaintiffs have been irreparably damaged by the transfer from Palestine of the general officers, and their subordinates, numbering some two hundred and fifty men, with an estimated pay roll of two hundred and fifty thousand dollars annually, such removal having greatly reduced the volume of business in said City and having materially depreciated all property values therein, and such damage, already amounting to over one hundred thousand dollars when this suit was brought has continued and increased and will continue and increase, until the return of said officers and their subordinates to their rightful location.

(36) That should the defendant cease to maintain and operate said machine shops and round houses and the general offices of said Superintendent of Motive Power and Machinery and Master Mechanic, at the City of Palestine, with their annual pay roll far in excess of that of the removed general offices, as threatened by defendant, such action would destroy or depreciate plaintiffs' property to an amount far in excess of half a million dollars, and would imperil and largely sacrifice the property and business interests of said city, and there would be no way to measure the resulting injury nor to make compensation therefor, and the damages thus sustained would be inestimable and irreparable, and this plaintiffs are ready to verify.

(37) That while the damages which would be sustained by plaintiffs by the continued absence of defendant's gen-



eral officers and their subordinates, from Palestine, during the pendency of this suit would be great and irreparable, the trouble and cost to defendant of restoring such officers, with their subordinates, books and records, to Palestine, would be so slight and inconsiderable as to be trivial—the transfer from Palestine to Houston having been effected within a few hours, over defendant's own railroad, and by means of defendant's own trains—and the return could be as easily and cheaply accomplished.

(38) That said general officers were transferred to Houston, with actual knowledge and notice, upon the part of the defendant, that this suit would be promptly brought, and that application would be made for a peremptory injunction, to restore the status of said general offices, machine shops and round houses, as they existed when the controversy arose between plaintiffs and defendant as to their location, and as such status had existed for more than thirty years.

(39) That plaintiffs' original petition was presented to the court at the earliest possible moment after plaintiffs became possessed, through exercising the utmost diligence, of actual knowledge as to the material facts alleged in said petition.

(40) That plaintiffs have no adequate remedy at law for the wrongs and injuries inflicted upon them by defendants, nor to prevent the grievous wrongs and injuries with which they are threatened by the defendant, and, in no other way, can plaintiffs have any complete or adequate remedy for the wrongs and injuries already suffered by them, nor to prevent those with which they are threatened, save by means of the writ of injunction.

(41) That the Hon. B. H. Gardner, Judge of the Third Judicial District of Texas, and Judge of the District Court of Anderson County, Texas, when this suit was filed in said court, was one of the citizens of the City of Palestine, in whose behalf this suit was brought, and was the owner of property in said city, and he was also

the father of the wife of the plaintiff R. C. Sewell, and hence said Judge was disqualified to hear and to act upon plaintiffs' application for temporary injunction, or to make any orders herein.

(42) Wherefore, plaintiffs applied to the Honorable Judge of the District Court of Cherokee County, Texas, who, on the 7th day of February, 1912, ordered a writ of injunction to issue, commanding the defendant International & Great Northern Railway Company to desist and refrain from changing the location of the machine shops and round houses of the International & Great Northern Railroad, as operated by the defendant, from the City of Palestine; and to desist and refrain from changing the location of the general offices of the Superintendent of Motive Power and Machinery, and the Master Mechanic, engaged in the operation of said Railroad, from the City of Palestine, which writ of injunction was duly issued and served on defendant, and which injunction, in so far as it commands the foregoing acts, is still in full force and effect.

(43) And, plaintiffs pray, the defendant having answered, that the court will hear proof, and that plaintiffs may have judgment, establishing the contracts and agreements herein plead, and for judgment enforcing the public duty of defendant to forever keep and maintain its general offices, machine shops and round houses at the City of Palestine, and that plaintiffs may have judgment that the temporary injunction granted as aforesaid, be made perpetual; and for a mandatory injunction commanding defendant to at once desist and refrain from keeping or maintaining any other general offices, in connection with the operation of said Railroad at any other place than the City of Palestine, and commanding and requiring the defendant to keep and maintain all of the general offices for the operation of said Railroad at the City of Palestine, and for all other and further relief,

special and general, in law and in equity, to which plaintiffs may be rightly and justly entitled.

A. G. GREENWOOD,  
 CAMPBELL, SEWELL & STRICKLAND,  
 THOS. B. GREENWOOD,  
 JNO. C. BOX,  
 R. O. WATKINS,  
 JOHN B. GUINN,  
 PERKINS & PERKINS,  
*Attorneys for Plaintiffs.*

THE STATE OF TEXAS,  
 COUNTY OF ANDERSON.

I, Geo. A. Wright, do solemnly swear that I am one of the plaintiffs in the foregoing petition, and that the facts and statements contained in said petition are true to my knowledge and belief, and that I make this affidavit in behalf of, and as agent for, my co-plaintiffs in said petition and myself.

GEO. A. WRIGHT.

Subscribed and sworn to before me by Geo. A. Wright, this the 19th day of December, 1913.

E. T. MCCAIN,  
*Clerk of the District Court of Anderson County, Texas.*

THE STATE OF TEXAS,  
 COUNTY OF ANDERSON.

I, Mrs. Mollie Ford Reagan, do solemnly swear that I am the widow of Judge John H. Reagan, formerly of Anderson County, Texas; that I was present at the home of myself and Judge John H. Reagan, then my husband, on or about the 15th day of March, 1872, when Galusha A. Grow, acting in behalf of the Houston & Great Northern Railroad Company offered to extend the line of the Houston & Great Northern Railroad to Palestine, and I know, of my own personal knowledge, that, as a consideration for the bond issue desired from Anderson County by said Company, in aid of the construction of said Rail-

road, the Company, through President Grow, offered unto the citizens of the City of Palestine, then represented by Judge Reagan, to locate and establish, and to thereafter forever maintain, the general offices, machine shops and round houses of the Houston & Great Northern Railroad, at the City of Palestine; that the plaintiff Geo. A. Wright was present when said offer was made; that I believe all of the averments of the foregoing petition to be true; and that this affidavit is made in behalf of the plaintiffs in said petition.

MRS. MOLLIE FORD REAGAN.

Subscribed and sworn to before me, by Mrs. Mollie Ford Reagan, on this the 19th day of December, 1913.

(L. S.)

E. T. McCAIN,

*Clerk of the District Court of Anderson County, Texas.*

THE STATE OF TEXAS,  
COUNTY OF ANDERSON.

I, J. W. Ozment, do swear that I am one of the plaintiffs in the foregoing petition; that I was a party to the contract and agreement between the citizens of Palestine and the International & Great Northern Railroad Company, on or about the first of the year 1875, and that the averments of said petition relative to said contract and agreement and relative to compliance therewith by the citizens of Palestine, to the satisfaction of said Company, are true; and I make this affidavit in behalf of, and as agent for, my co-plaintiffs in said petition and for myself.

J. W. OZMENT.

Subscribed and sworn to before me, by J. W. Ozment, on the 19th day of December, 1913.

(L. S.)

E. T. McCAIN,

*Clerk of the District Court of Anderson County, Texas.*

**FIRST AMENDED ANSWER.**

Filed January 7, 1914.

Anderson County, et al.,

vs.

International & Great Northern  
Railway Company.

In the District Court of Cherokee County, Texas.

*To the Honorable the Judge of Said Court:*

With leave of the court and subject to the plea to the venue herein filed and heretofore ruled on by the Judge of the District Court of Anderson County, Texas, and insisting upon the same and upon its Bill of Exceptions reserved to the action of that court in overruling such plea, the International & Great Northern Railway Company, the defendant, now with leave of the court amends its Original Answer, filed herein, and in lieu thereof files this, its First Amended Original Answer, as follows, to the plaintiffs' First Amended Original Petition:

## 1.

The International & Great Northern Railway Company pleads in abatement of this suit and shows that this court has no jurisdiction to hear and determine the matters herein proposed by the plaintiffs for litigation, because of the facts now stated:

1. On the 25th of February, 1908, the Mercantile Trust Company filed its bill against the International & Great Northern Railroad Company, in the Circuit Court of the United States for the Northern District of Texas, Fifth Circuit, wherein it was set out that on March 1st, 1892, that railroad company had executed its mortgage to the Mercantile Trust Company, Trustee, for the purpose of securing an issue of bonds for the aggregate principal amount of \$3,000,000, bearing interest at the rate of 4 per cent per annum, payable until and including September 1st, 1897. only, out of the net earnings, and thereafter

absolutely. It was alleged that default had been made in payment of interest; that the railroad was insolvent, and prayer was made for a decree and foreclosure and sale, and also for the appointment of a receiver. This suit was styled The Mercantile Trust Company, Trustee, Complainant, vs. The International & Great Northern Railroad Company, Defendant, and was numbered 2501 on the Equity Docket of the court. The defendant appeared and on February 25th, 1908, the court appointed Thomas J. Freeman Receiver of all of the railroads, lands, franchises and properties of the railroad, covered by the mortgage sued on, and the Receiver proceeded at once to qualify under the terms of this decree and to take charge of, control and operate the properties. This mortgage created a lien upon all the lands, tenements and hereditaments owned by the railroad company, and thereafter to be acquired by it, including tolls, fares, freights, rents, income, issues and profits thereof, and all the reversions, remainder and remainders thereof. No foreclosure has been had of this mortgage, and the suit so brought is still pending, undisposed of, in the United States District Court for the Northern District of Texas, at Dallas, such court being the successor of the United States Circuit Court. Thomas J. Freeman qualified as Receiver on the 28th of February, 1908. A copy of the Bill of Complaint is hereto attached, marked Exhibit "A" and made a part hereof.

2. The suit mentioned in paragraph 1 was docketed at the Fort Worth division of the Northern District of Texas, but on March 7th, 1908, by agreement of all parties, was transferred by the order of the court from the Fort Worth division to the Dallas division, where it is still pending in the United States District Court. A copy of the appointment of the Receiver is hereto attached and is marked Exhibit "B" and made a part hereof.

3. Thereafter, in the same court, The Farmers Loan & Trust Company, as Trustee, applied for permission to file in that court its Bill of Complaint, which was granted

by the Judge, April 20th, 1908. Whereupon, on the same day, the Farmers Loan & Trust Company filed its bill versus the International & Great Northern Railroad Company, The Mercantile Trust Company, and Thomas J. Freeman, Receiver, as defendants, the case being docketed and numbered 2514 Equity.

In this bill the complainant set out that, on or about the 15th of June, 1881, the Railroad Company had executed its bonds for the aggregate principal amount of \$10,391,000, payable in gold at the agency of the company in New York City on the first of September, 1909, bearing interest, evidenced by coupons, at the rate of 6 per cent per annum from March 1st, 1881, payable in gold; and that to secure these bonds duly delivered and which had passed to various persons, it executed its mortgage and deed of trust of the same day, whereby it conveyed to The Farmers Loan & Trust Company, as Trustee, of the City of New York, all the lands, except as therein specified, tenements and hereditaments of the railroad company, owned or hereafter to be acquired, including all of its tracks and railroad equipment, with all of its corporate rights, privileges, immunities and franchises, owned or to be acquired, including the franchise to be a corporation, and all the tolls, fares, freights, rents, income, issues and profits thereof, and otherwise as more particularly in the deed of trust and mortgage set out. It was further alleged in this bill that the authorized bonds had been issued and negotiated for value, and were valid outstanding obligations of the railroad company. Further, it was alleged that the railroad company had defaulted upon its interest to a large amount and the proceedings by the Mercantile Trust Company mentioned in sub-section 1, above, were described. It was alleged that there was a prior first mortgage made to Kennedy and Sloan, Trustees, dated November 1st, 1879, that the railroad was embarrassed and insolvent, and prayer was made for the appointment of a receiver and for foreclosure and sale of the properties and a full settlement of all matters. A



copy of this bill and mortgage is attached hereto, marked Exhibit "C." It is now alleged that all allegations and statements of said bill and mortgage are true, and they are made part hereof.

4. Upon consideration of this bill and having jurisdiction in cause No. 2514, on the 20th of April, 1908, the Judge of the United States Circuit Court appointed Thomas J. Freeman Receiver as prayed for, and in this cause, all as appears by the decree attached hereto and marked Exhibit "D," and made a part hereof.

5th. On the 14th of May, 1908, George J. Gould, Frank J. Gould, Edwin Gould, Helen M. Gould, Pacific Express Company, Missouri Pacific Railway Company, and George J. Gould, Edwin Gould, Howard Gould and Helen M. Gould as Executors of the will of Jay Gould, applied to said Circuit Court for permission to file their bill of complaint against the International & Great Northern Railroad Company, which application was granted the same day.

6. Under the permission given above on the 2nd of June, 1908, in Equity Cause No. 2525, in the Circuit Court of the United States, for the Northern District of Texas, at Dallas, the last mentioned applicants filed their bill in equity against the International & Great Northern Railroad Company, wherein they set out, among other things, that, in addition to the second and third mortgages executed by this railroad, there was a first mortgage executed by it of date the 1st of November, 1879, to Kennedy and Sloan, as Trustees, who had been substituted by the Bowling Green Trust Company of New York as Trustee, and that this first mortgage was for the principal sum of \$11,290,000 and was a valid lien upon all of the properties, rights and franchises of the International & Great Northern Railroad Company. The suits and receiverships above mentioned, as pending and taken out were mentioned, and it was alleged that the complainants in their various capacities had recovered judgments in the aggregate amounts of \$4,929,108.46 against the Inter-

national & Great Northern Railroad Company in the Fourteenth District Court of Dallas County, Texas, which judgments were exhibited with the bill, and it was alleged that none of them had been paid. It was further alleged that the International & Great Northern Railroad Company was wholly unable to pay and discharge said judgments by reason of admitted insolvency and on other grounds; but that the railroad had certain property and assets not embraced in the three mortgages, either intangible or so bound up with properties covered by the mortgages as now to be in the possession of the receiver, and the value thereof inhering in the use of the same in connection with the operation of the railroads; that there was a danger of multiplicity of suits and a necessity for the compact conservation, by the order of the court, of such property and its being brought under the receivership now existing, for which there was prayer and for marshalling the unmortgaged properties and ascertainment of the debts and liens and priorities.

7. On the second day of June, 1908, the prayer in the above suit, No. 2525 Equity, for the appointment of the Receiver was considered by the Honorable A. P. McCormick, United States Circuit Judge, Fifth Circuit, and thereon a decree entered appointing Thomas J. Freeman Receiver upon the terms and conditions set out in the decree of the court, hereto attached and marked Exhibit "E," and on this appointment, and all others, Thomas J. Freeman accepted and acted as Receiver.

8. And on or about the same day in Equity 2514, Thomas J. Freeman, Receiver, in all three cases, filed his respective applications that these causes should be consolidated. Thereupon the court made his order of June 2nd, 1908, directing their consolidation and applying previous decrees of the Court and orders as in the order of consolidation set out, hereto attached, marked Exhibit "F," hereto attached and made a part hereof, and consolidated cause being No. 2501.

9. On the 7th of June, 1909, The Farmers Loan and

Trust Company, as Trustee, in Equity 2501, the consolidated cause, having previously obtained the leave of the court, filed a supplemental bill, affirming the allegations of their original bill, and setting out additional defaults as alleged and praying for the benefit of the proceedings taken under the original bill, for relief already prayed and otherwise as in the supplemental bill set out, a copy whereof is attached hereto and marked Exhibit "G," and made a part hereof. The allegations in this supplemental bill contained are now alleged to be true and that the said mortgage, as well as the first and second mortgages, were all duly issued and authorized regularly by the directors and stockholders of said road.

10. The above proceedings being had and commencing with the institution of the first suit, and thereafter said Circuit Court entered various administrative orders providing for the maintenance, control and management of the properties and its protection, the issue of receiver's certificates to raise necessary funds, the payment of interest on the first mortgage bonds, all as sufficiently appears in the decree next exhibited herewith; and proceeding on the demand of the trustee of the second mortgage bonds, on May 10th, 1910, the court entered the decree of foreclosure of the second mortgage, ascertaining and settling various indebtednesses and matters at issue and directing the properties of the railroad to be sold upon the terms and conditions and all as in the decree set out. This decree foreclosed the lien upon all of the properties, tangible and intangible, together with all the corporate rights, privileges, immunities and franchises of the defendant and all other properties as in the decree stated, and declaring that all of the right, title, estate and equity of redemption of the defendant and all parties to Equity Cause 2514, and of all persons claiming or to claim under them, or either of them, or, in or to the premises, property and franchises, and every part and parcel thereof, should be forever barred and foreclosed, and also that the lien of the second mortgage upon the properties

was prior and superior to every lien in favor of any party to this cause, and was subordinate only to the lien of the first mortgage, except as in the decree stated, and also that the Master Commissioner making the sale should receive no bid from any person on the property until said person should have deposited with him the sum of \$100,000, to be returned in case his bid was not accepted, but to be held in case his bid was accepted on account of the purchase price; and that a further payment for the property might be made in bonds and coupons secured by the second mortgage, taken at a valuation equal to the amount said bonds and coupons would be entitled to receive in cash out of the amount bid for said property, on the terms and conditions as in the decree stated; and further, that the property should be offered for sale subject to the first mortgage and to any unpaid indebtedness or liability contracted or incurred by the defendant in the operation of its railroad, which the court may hereafter order or decree to be prior or superior to the lien of the second mortgage, except such as should be paid or satisfied out of the income of the property in the hands of the receiver under the orders of the court, entered or to be entered; and subject also to such debts, claims, liens and demands of whatsoever nature theretofore incurred or created or which might thereafter be incurred or created by the receiver under orders of the court theretofore or thereafter entered, and not paid or to be paid out of the proceeds of the sale. Also, it was decreed that the Master Commissioner by public notice should require holders of any claim for unpaid debts or liabilities to present the same for allowance; and that, if they should not be presented within three months after the first publication of such notice, they should not be enforceable against the receiver or the property sold or the purchaser or his successors or assigns. It was furthermore decreed that the form of the conveyance to the purchaser should be settled upon by the Master Commissioner or the court, or a judge thereof, should there be any question thereon;

and that, in default of such conveyance, the decree should operate as a conveyance, and that the purchaser or purchasers, his or their successors and assigns, should have the right, within six months after the completion of the sale, or delivery of the deed of the Master Commissioner, to elect whether or not to assume or adopt any lease or contract made by the defendant railroad company, and that such purchaser or purchasers, his or their successors and assigns, should not be held to have assumed any of such leases or contracts which he or they should so elect not to assume, such election to be shown by filing with the clerk of this court, from time to time, within said period, a description of such leases or contracts which he or they should so elect not to assume; and it was further provided in this decree that all questions not thereby disposed of, including the discharge of the receiver and the settlement of his accounts, and including the disposition of all claims theretofore filed or thereafter to be so filed, in accordance with the provisions of the decree, were reserved by the court for future adjudication, and it was declared: "The court reserves jurisdiction of this cause and the property affected by this decree for the purpose of final disposition of all such questions and matters; and any party to this proceeding and any claimant whose claims have been or shall be so filed herein, may apply to the court for further orders and directions at the foot of the decree"; and otherwise and generally in said decree the court reserved jurisdiction, directly and implied, of the properties and for the purpose of enforcing the decree in all of its terms. A copy of this decree is attached hereto and marked Exhibit "H," and made a part hereof.

11. On September 7th, 1910, the court entered an order deferring the sale provided for in the decree last above set out to October 6th, 1910, or to some later date to which the same might be again adjourned.

12. On November 28th, 1910, the court made an order directing that the case of the Marshall Car Wheel &

Foundry Company, Complainants, vs. The International & Great Northern Railroad Company et al., Defendants, No. 2623, in Equity, should be consolidated with the previously consolidated cause, and that all orders and decrees in said last cause be extended and applied to the newly consolidated cause.

13. The sale was again adjourned by the order of the court, and under its order, or in accordance therewith, to May 16th, 1911; but on the 12th of May, 1911, the court filed another order, decreeing that the sale should be adjourned to June 13, 1911, a copy of which last order is hereto attached, marked Exhibit "I."

14. The sale was made as provided in the decrees by the Master Commissioner, at public outcry, on June 13th, 1911, at Palestine, Texas, to Frank C. Nicodemus, Jr., and duly reported to the court and by the court in all things approved, as appears by the order of court dated September 25th, 1911, a copy of which is attached hereto and marked Exhibit "J," and made a part hereof, and also a copy of the report of sale marked Exhibit "J-1," and made a part hereof.

15. By charter dated the 8th of August, 1911, the International & Great Northern Railway Company, the defendant herein, as an independent and new railway company, was incorporated under the laws of the State of Texas, and a copy of the charter of that railway is attached hereto and marked Exhibit "K," and made a part hereof. This charter authorized the defendant to acquire, own, maintain and operate the railroads heretofore forming the International & Great Northern Railroad Company and which had been purchased by Frank C. Nicodemus, Jr., at the sale of the properties mentioned above, and all as stated in said charter.

16. On the 31st day of August, 1911, a deed was executed, whereby the Master Commissioner, the International & Great Northern Railroad Company, Thomas J. Freeman, Receiver, Frank C. Nicodemus, Jr., the above purchaser, and The Farmers Loan & Trust Company,

Trustee of the second mortgage, conveyed to the International & Great Northern Railway Company the properties purchased at the sale, all as appears by a copy of the deed hereto attached, marked Exhibit "L" and made a part hereof. Having acquired those properties the International & Great Northern Railway Company has since its acquisition operated the same under said charter and the laws of Texas.

17. The amount bid at said sale by Nicodemus was \$12,-645,000 of which as prescribed by the decree he deposited at the time of his bid \$100,000, and thereafter, on or about September 13th, 1911, he paid the additional amount of \$144,253.45, making the total cash payment \$244,253.45, and he made the remaining payments under the terms of the decree as follows, and through the Farmers Loan & Trust Company in second mortgage bonds of the face value; that is, for the principal amount as next stated to which was to be added the amount of accrued interest, to-wit:

On or about September 13, 1911....\$ 164,500

On or about September 13, 1911.... 9,182,000

On or about September 13, 1911.... 990,000

Total in bonds, principal, not including interest, \$10,-336,500. To these bonds were attached the coupons maturing March 1, 1908, and subsequently, and interest was to be added.

Whereby by such payments the total amount of the bid under the terms of the decree of \$12,645,000 was paid.

The apportionate amount applicable out of the bid to the second mortgage bonds not used as means of payments was, to-wit, of the principal amount of \$54,500 was paid to apply thereto in the sum of \$65,383.89, as appears by the report of the Master Commissioner set out above.

It thus appears that the purchase was made with the decree with the exception of \$244,253.45; which decree and the bonds carried therein and representing the same it thus appears was owned by Frank C. Nicodemus,



Jr., or the persons whom he represented at the time of the purchase, and also that there was a deficit and the amount of the decree was not realized.

18. The above causes and consolidated cause are still pending upon the docket of the United States District Court for the Northern District of Texas, at Dallas, Texas, successor to the United States Circuit Court for the Northern District of Texas.

19. The International & Great Northern Railway Company, the defendant, here now states and represents that it purchased the above described properties upon the faith, guarantees and statements of the proceedings held in the United States Court and the reservations of the decree therein.

20. All the notices provided for in the decree of foreclosure and the supplements thereto were duly given as conditions for the making of the sale, they being given and published exactly as provided for by the decrees of the court.

21. The International & Great Northern Railway Company and Nicodemus, the purchaser at the sale, exercising the privilege and right provided for by the decree, the International & Great Northern Railway Company being authorized and directed so to do, by resolution of its Board of Directors, a copy of which is attached hereto, marked Exhibit "M", did within six months after the completion of the sale and the delivery of the deed of the Master Commissioner, elect that they would not assume or adopt, and that it, the International & Great Northern Railway Company electing for itself, would not assume or adopt any contract whatsoever made either by the International & Great Northern Railroad Company or the Houston & Great Northern Railroad Company with the plaintiffs herein or any of them, and which they now sue on; such election being shown by filing with the Clerk of the United States Circuit Court at Dallas, Texas, within said six months, a description of such contracts which were elected not to be assumed; a copy of

which election and statement is attached hereto and marked Exhibit "N"; and further, within said time exercising due precaution, though not required as it is advised by the decree of the court, this defendant caused notice of its intention and election not to perform or assume or adopt said alleged contracts sued on, to be served upon the Commissioners Court of Anderson County, and the City Council of the Town of Palestine, by reading and delivering the same to said bodies at regular meetings, and copies of such notices are hereto attached, marked Exhibits "O" and "P" respectively. In making such election this defendant did not acknowledge the existence of the alleged contracts sued on, which it had always denied did exist, but declared and elected not to adopt and assume them, if they existed.

22. Wherefore, upon all of the above, this its plea of abatement, the International & Great Northern Railway Company, the defendant, says:


(a) That it appears from the above that this court has no jurisdiction to try and hear this cause or the issues of law and the fact herein tendered, and that the sole jurisdiction to try, hear and determine the same is in the United States District Court for the Northern District of Texas, if not already disposed of.

(b) That the United States Circuit Court for the Northern District of Texas, directly and by implication, reserved jurisdiction to hear and determine any such cause of action and issues as the plaintiffs now tender and sue on, and that all such questions, if they be open, as may be involved in this case are questions not disposed of in said cause and causes, formerly pending and now pending in the United States Circuit Court of the Northern District of Texas, and the United States District Court there.

(c) That the United States District Court of the Northern District of Texas is open to entertain the cause of action of the plaintiffs, if any they have, which is not admitted, and that the above cases are still pending upon

the docket of that court, but that it is immaterial whether they be so still pending, as that court alone has jurisdiction to hear and determine the matters herein propounded for litigation.

(d) And furthermore, the International & Great Northern Railway Company represents that it appears upon the face of the proceedings and matters set out above that to further litigate this cause in this court would invade the jurisdiction and the decrees of the United States Court, and that a Federal question is now presented upon this matter; that this Federal question being that the matters herein tendered for litigation have already been barred by the decree of the United States Court, the plaintiffs herein refusing to intervene or come before that court, and the proceedings now attempted in this case being in violent collision with the decrees of that court, set out above, and ignoring and conflicting with the same; and in this connection it is alleged that the plaintiffs, each and all of them, and those whom they represent, had full notice of all of the proceedings in the United States Court and were invited to participate therein and refused to intervene or come before that court; whereby, it is represented that it appears upon the face of the decree that they are thereby forever barred and precluded; and furthermore, that whether or not they were barred or precluded is only for the adjudication of that court and not for the adjudication of this court, and that it is only for that court and not this court to adjudicate the plaintiffs' rights, if any they have, and this defendant invokes the constitution and statutes of the United States, and the powers, jurisdiction and decision of said United States Court; and also, not limiting the above, Section 709 of the Revised Statutes of the United States carried into Section 237 of the Act of Congress of March 3, 1911 (36 Stat., 1087) in protection of the title, right, privileges and immunities established by and acquired under the authority of the decree and proceedings of said court.



(e) Wherefore, upon all of the above, the International & Great Northern Railway Company represents that this court has no jurisdiction of this cause; and furthermore, that this cause should abate in this court. Wherefore, it prays that this cause should abate and that the defendant go hence without day.

THE STATE OF TEXAS,  
COUNTY OF HARRIS.

I, Samuel B. Dabney, do on my oath say, that I am an attorney of the International & Great Northern Railway Company and that all of the statements of fact contained in the above plea in abatement, being under the head I., sub-sections 1 to 21, inclusive, are true.

SAM'L B. DABNEY.

Sworn and subscribed to before me this 8th Jan., 1914.

J. J. BOLTON,

*Clerk District Court Cherokee Co. Tex.*

(SEAL)

By E. S. JONES, *Deputy*.

WILSON, DABNEY & KING,  
F. A. WILLIAMS,  
N. A. STEDMAN,  
ANDREWS, BALL & STREETMAN,  
MORRIS & SIMS,  
NORMAN, SHOOK & GIBSON,  
W. E. DONLEY,  
F. B. GUINN.

## II.

And further, the International & Great Northern Railway Company, the defendant, protesting that there is no venue in this court or jurisdiction on that ground, and preserving its contention in that regard, and its Bill of Exception already taken, and also protesting that the plaintiffs are barred and estopped by the decree and proceedings in the Federal Court, above set out in Section I., and that if there be any cause of action in them, it is

only subject to litigation in the Federal Court, if anywhere, and preserving all its contests against the plaintiffs in these particulars, further answers as follows, subject to the above and subject to its positions, as above, not being maintained:

1. That International & Great Northern Railway Company demurs to plaintiffs' petition and says that it is insufficient in law.

2. This defendant demurs specially to all that part of the petition stating and alleging a contract between the Houston & Great Northern Railroad Company, acting through Grow, and the citizens of Palestine, acting through John H. Reagan, and with said Reagan, as in the petition set out, in consideration of the promise and alleged services of Reagan in canvassing the County to induce a bond issue, because no contract is there stated, and because the allegations are insufficient to show a contract; and because any such agreement, if ever made, would be illegal, void and contrary to public policy, and incapable of enforcement.

3. This defendant specially demurs to the allegations in the petition, setting out promises, agreements and representations of Grow and other agents of the railroad to locate offices and shops, and render considerations as stated, in promotion of the canvass for the county bond issue, and otherwise; because such allegations are wholly irrelevant and immaterial; and because any contract with the county was required by law to be in writing, and such canvassing promises, if made, are not provable; and because evidence thereof will not be accepted.

4. This defendant demurs to the allegations in the petition that the electors of the County were induced by promises and considerations offered them to vote for the issue of the bonds, because the same are irrelevant and immaterial; and because it is not now a subject of proof to determine what motives, if any, outside of the written contract of the county, caused the voters to vote for the bond issue, the law requiring the contract with the county

and proposition submitted to the voters to be in writing, which writing necessarily stated all of the considerations.

5. The defendant demurs to the allegations concerning the election for the issue of bonds and the actual issue thereof, upon the alleged inducements and considerations stated, because they are insufficient and irrelevant, because the only legal evidence of the election and the considerations for the issuance of the bonds were required by law to be in writing, and of record; and because such records are not set forth and their contents in no way stated.

6. The defendant specially demurs to the allegations of the petition in regard to the considerations and inducements for the election and in promotion thereof, and to induce the voters of Anderson County in 1872 to vote for a bond issue, and the authorities of Anderson County thereafter to issue these bonds, because the law required all such matters to be in writing; and because these written documents are suppressed and left out of the pleadings.

7. The defendant specially demurs to the allegations concerning the promises, agreements and representations stated to have been made by Grow to the County Court to induce the delivery of the bonds; because neither Grow nor the County Court, nor both together, could form any such contract or could alter or change any existing contract between the railroad and the county in this matter; and because such contract could only be formed by an election and was not subject to variation or condition by any understandings or conditions between Grow and the County Court.

8. This defendant specially demurs to the allegations setting out transactions between Hoxie and the citizens of Palestine, including Wright and Ozment, in regard to the renting of houses and the erection of houses and the other matters in that connection therein stated; because

the same are insufficient to show the formation of a contract.

9. The defendant specially demurs to all of the allegations concerning the alleged transaction between Hoxie and the citizens of Palestine, including Wright and Ozment; because it is not alleged that the agreement was in writing and signed by any of the parties to be bound, so as to be valid under the statute of frauds, nor does it appear from these allegations whether or not the agreement was in writing.

10. The defendant specially demurs to the allegations concerning the transactions between Hoxie and the citizens of Palestine, including Wright and Ozment; because it is not therein alleged how long and for what period the houses were to be rented; nor what houses were constructed, on what specifications, who were the owners, the descriptions and locations of the houses; their number, how long they were rented, and what has become of these houses; and because in these particulars the pleader carefully avoids any precise statement.

11. The defendant specially demurs to the allegations of the ratification of the actions of the several officers of the railroad or railroads in making the alleged agreements relied on; because the particulars of such ratifications are not given, when, how and where made, and how acquiesced in; this defendant now insisting upon full particulars in regard to these matters.

12. The defendant specially demurs to all of the allegations contained in the petition concerning the plan for the re-organization, as alleged, of the International & Great Northern Railroad Company, the foreclosure of the mortgages upon its properties, the sale and purchase thereof, the organization of this defendant and the acquisition of such property by it; because the same are insufficient and irrelevant to charge it with any obligation arising out of the alleged contracts of the sold out company; and because such allegations are too general and indefinite to require any answer.



13. The defendant specially demurs to the petition wherein it is alleged that it was incorporated and obligated to keep its offices at Palestine, because the provisions of its charter and domicile therein named are not stated.

14. This defendant specially demurs to the allegations in the petition, relating to the re-organization as alleged of the sold out railroad, the foreclosure of mortgages upon its property and the sale and purchase thereof, and the creation of this defendant and the acquisition by it of such property :

(a) Because the terms of the decree of foreclosure are not set out ; nor the decree ; nor the sale ; nor the reservations and restrictions therein, and conditions, under which the sale was made ; and because it is not stated in what court such proceedings were had.

(b) Because the statement of the mortgages proceeding and foreclosure are incomplete to show their character.

(c) Because the allegations in regard to the alleged re-organization are insufficient, in that it does not appear whether or not the same were in writing.

(d) Because it is not illegal for bond holders to use their foreclosure decree as a means of purchase of the property or to form an organization for their own protection and the purchase of the property with their foreclosure decree.

15. The defendant specially demurs to said petition, because it is confused and contains careful suppression of documents, to-wit, the alleged decree of foreclosure and proceedings thereon, the alleged contract with the County of Anderson for the bond issue, which the law required to be in writing ; and because the same is redundant and tautological.

16. This defendant specially demurs to said petition, because the various allegations of fact and each fact, if any there be, going to make up any cause of action, are not plead in separate paragraphs and each paragraph

numbered consecutively, so that this defendant can admit or deny the same intelligently and without confusion.

17. The defendant specially demurs to the 29th section of the First Amended Petition,

(a) Because as a whole it is insufficient in law.

(b) Because it is incomplete and vague in its allegations.

(c) Because the rights of plaintiffs, if any they had, were eliminated by and were inferior to the foreclosed mortgage.

(d) Because neither in said section nor elsewhere is the history of such foreclosed mortgage set out.

18. Defendant excepts to the plaintiffs' petition and particularly to the allegations of an alleged agreement made with the Houston and Great Northern Railroad Company, for the location and maintenance of the General Offices at Palestine, that it is not alleged either that the charter of the Houston and Great Northern Railroad Company did not name a certain place where its General Offices shall be located and maintained, or that the charter of the Houston and Great Northern Railroad named Palestine, Texas, as the place for the locating of its general offices.

19. Defendant excepts to the plaintiffs' petition and particularly to the allegations of an alleged agreement made with the International and Great Northern Railroad Company, for the location and maintenance of the general offices at Palestine, that it is not alleged either that the charter of the International & Great Northern Railroad Company did not name a certain place where its general offices shall be located and maintained or that the charter of the International & Great Northern Railroad Company named Palestine, Texas, as the place for the locating of its general offices.

And of these its demurrers, general and special, International & Great Northern Railway Company, prays the judgment of the court and that each and all be sustained.

## III.

The International & Great Northern Railway Company answers the plaintiffs' first amended original petition upon their allegations of fact, if answer thereon be required, as below. In traversing the issues of fact, the defendant does not waive its plea to the venue, its plea in abatement, its demurrers and other positions taken above, but preserves the same and answers further subject to the same and subject only to their being overruled. Subject to the above it answers on the facts as follows: This answer is applied to the first amended petition and all references below are to it and the sections thereof.

1. The defendant admits the allegations contained in Section 1.

2. The defendant admits the allegations contained in Section 2.

3. The defendant admits the allegations contained in Section 3.

4. As to Section 4 the defendant says that it has no knowledge or information thereof sufficient to form a belief except that it admits that the City of Palestine has a population of at least 10,000, and also, it is admitted that it is impracticable to make all of the citizens parties to this suit in their proper persons. Wherefore, with the exception of such admissions, the defendant denies Section 4.

5. The defendant admits as alleged in Section 5 that it is a corporation authorized under the laws of Texas, but denies that it is required by law to keep and maintain its general offices in the City of Palestine in the County of Anderson, Texas.

6. The defendant admits the allegations contained in Section 6.

7. The defendant admits the allegations contained in Section 7.

8. The defendant admits the allegations contained in Section 8.

9. As to Section 9 the defendant says that in regard to the allegation that on the 15th of March, 1872, the Houston & Great Northern Railroad Company had constructed or had determined to construct under its charter its line of railroad from the City of Houston, northward to the north boundary line of Houston County, Texas, it, that is, this defendant, denies that it has any knowledge or information thereof sufficient to form a belief, therefore it denies such allegation.

As to the remainder of the allegations and of statements contained in Section 9, the defendant denies the same.

10. As to Section 10 the defendant denies all the allegations and statements therein contained.

11. As to the allegations in Section 11, the defendant denies the same.

12. As to the allegations in Section 12 of plaintiffs' petition, defendant denies the same.

13. As to Section 13 the defendant denies each and all of the allegations therein contained except that it admits that the electors of Anderson County did authorize the issue and delivery to the Houston & Great Northern Railroad Company of the bonds of the County in the principal sum of \$150,000 with interest and to run for the time stated upon the completion of the railroad to an intersection with the International Railroad at Palestine and upon the establishment of a depot within a half mile of the court house at Palestine and upon the commencement of the regular running of the cars to such depot.

14. The defendant denies Section 14 and all of the allegations therein contained.

15. The defendant admits Section 15 and the matters therein stated, except that it denies that anything was passed on at said election except the issue of the bonds, on consideration of the road building into and operating into Palestine within the year 1872, and erecting said depot.

16. As to Section 16 the defendant admits that prior

to the 31st of December, 1872, the Houston & Great Northern Railroad Company had completed its railroad to an intersection with the International Railroad at Palestine and commenced to run its cars regularly thereto and that on or about the 29th of January, 1873, the bonds as stated in Section 16 were issued or authorized to be issued to the Houston & Great Northern Railroad Company, but each and every other allegation in said Section 16 the defendant denies. In admitting the issue of these bonds and their authorization, it is intended to admit these bare facts and to deny every other allegation not expressly admitted above.

17. The defendant denies all the allegations in Section 17 contained.

18. As to Section 18 the defendant admits the allegations therein contained except as follows:

a. It does not admit that before September, 1873, the union of the roads was consummated or that they were managed jointly, but denies the allegations in that regard.

b. It does not admit that the terms of consolidation were approved, ratified and confirmed by the legislature, but denies this allegation, but admits that the legislature by the acts approved respectively April 24, 1874, and the 10th of March, 1875, did recognize the consolidation into the International & Great Northern Railroad Company.

19. The defendant admits the allegations contained in Section 19.

20. The defendant denies all of the allegations contained in Section 20, but in making this denial it is not denied that the machine shops and round houses were at Palestine where they still are and are still being operated. It is denied that they were placed there and kept there upon any of the considerations stated or in part performance of any alleged contracts, promises and agreements.

21. The defendant denies all the allegations in Section 21 contained.

22. The defendant denies all of the allegations in Section 22 contained.

23. The defendant denies all the allegations in Section 23 contained.

24. The defendant admits all the allegations contained in Section 24 with the following exceptions:

a. It denies that the property was sold subject to the lien of a mortgage of date December 1, 1890, and admits that it was sold subject to the lien of a mortgage of date December 1, 1879, and admits that the allegations in that regard would be correct if the date 1890 were changed to 1879.

b. It denies that the foreclosure of the mortgage of June 15, 1881, was of and upon all the property of the International & Great Northern Railroad Company, but admits that it was upon all of the property as alleged in this Section 24 with the exception of the following, as stated in the decree of foreclosure:

"Excepting, however, all land grants, lands, land certificates, town lots, and townsites, owned or controlled by the said International & Great Northern Railroad Company, at the date of the execution of said second mortgage, namely, on June 15th, 1881, or any time prior to said date, which were not, on the first day of November, 1879, or thereafter up to the said 15th day of June, 1881, actually occupied and in use by the said Railroad Company and necessary to the occupation and maintenance of its lines of railroad; and excepting further any portions of said premises and property which may have been released from the lien and operation of said mortgage dated June 15th, 1881, and the releases for which have been duly filed for record in the proper county."

25. The defendant admits the allegations contained in Section 25 with the following exception on the implication of such allegations. It denies that the payment of the bid was made in cash except to the extent of \$244,-253.45, the balance being with second mortgage bonds.

26. The defendant admits the allegations contained

in Section 26 except that it denies that the associates of Frank C. Nicodemus, Jr., were nominal associates.

27. The defendant admits the allegations in Section 27 contained.

28. The defendant admits the allegations contained in Section 28, except that it denies the same wherein it is stated that the court forever discharged the railroads, franchises and properties of the sold out railroad company from the possession, custody and control of said court.

29. As to the allegations in Section 29 set out the defendant says,

a. It has not knowledge or information sufficient to form a belief whether or not Frank C. Nicodemus, Jr., had the knowledge imputed to him and of the notice in Section 29 stated, and therefore denies that he had such knowledge and notice.

b. As to the allegations that the defendant had actual knowledge and notice from the time of its organization to the present time of the claims asserted by the plaintiffs it says that it denies that it has such knowledge and notice from the time of its organization to the present time; except that it was informed that someone or persons at Palestine or the County of Anderson or the City of Palestine or someone, it cannot state more definitely, might make some claim such as is now pursued in this suit but on bases and grounds unknown to this defendant.

c. As to the allegation that the plaintiffs gave formal written notice of the causes of action herein alleged in advance of Nicodemus' bidding the defendant says that it concedes that some notice was given but denies that it has any knowledge or information thereof sufficient to form a belief as to whether or not the notice was given of the causes of action by plaintiffs alleged and therefore denies the same.

30. The defendant denies all of the allegations in Section 30 contained except that it admits the fact that the general offices, machine shops and round houses of the



sold out International & Great Northern Railroad have been located at the City of Palestine thereby not admitting that the general offices were located at such city continuously until in 1911, but denying that they were so continuously located and not admitting that the general offices of the Houston & Great Northern Railroad have ever been located at the City of Palestine, but denying that they have ever been so located; and except that as to the allegation that the machine shops and round houses of the Houston & Great Northern Railroad this defendant says that it has no knowledge or information thereof sufficient to form a belief thereon, and therefore denies that the machine shops and round houses of the Houston & Great Northern Railroad were ever located at Palestine; and except that it denies that a General Superintendent was ever maintained at Palestine, and except that it denies that such officers as are mentioned were at the time maintained at Palestine, and except that it denies that any of them were ever at Palestine for any considerable period of years.

31. The allegations in Section 31 the defendant admits except that it states that it has no knowledge or information thereof sufficient to form a belief as to whether or not the master of transportation and fuel agent were included in the general offices maintained at Palestine, and therefore denies the same.

32. The defendant denies all of the allegations in Section 32 contained.

33. As to the allegations in Section 33 the defendant has no knowledge and information thereof sufficient to form a belief as to what advice or information has been given to the plaintiffs and therefore denies the allegations in Section 33 contained. And defendant denies that it proposes to make any changes in violation of law.

34. The defendant denies the allegations in Section 34 contained.

35. As to the allegations in Section 35 contained the defendant denies that it has any knowledge or informa-

tion thereof sufficient to form a belief and that therefore it denies all of such allegations.

36. As to Section 36 the defendant denies that it has any knowledge or information of the matters therein alleged sufficient to form a belief and therefore denies such allegations.

37. The defendant denies all the allegations in Section 37 contained.

38. The defendant denies that it ever transferred its general officers to Houston. It admits that when it was organized and thereafter it had information that some sort of suit was threatened but denies all other statements in Section 38 contained.

39. As to the allegations of Section 39 this defendant denies it has any knowledge or information thereof sufficient to form a belief and therefore denies the same.

40. As to Section 40 the defendant denies that the wrongs and injuries claimed by the plaintiffs exist.

41. The defendant admits the allegations in Section 41 contained.

42. The defendant admits the allegations in Section 42, not, however, admitting any legal consequences or proposition of law therein alleged or that any writ of injunction was duly or legally issued.

#### IV.

Further pleading, subject to all of the positions taken above, and preserving the same, the International & Great Northern Railway Company represents: It does not admit that any such alleged contracts as are set out in plaintiffs' petition were ever made, and denies that they were made; but further represents that if any such agreements or contracts were ever made, either with Reagan or with Hoxie, and were ever ratified, as alleged in the plaintiffs' petition, then that for more than two years after the making and the ratification of the same (they being verbal and not in writing) they were breached

and broken by the International & Great Northern Railroad Company, its agents and employees, by which breach and break of these alleged contracts, if they ever existed (which is not admitted but denied), and then by and upon such breach and break they became actionable, and that all of this happened and said cause of action arose more than two years and more than four years before the institution of this suit and more than two years and more than four years before the International & Great Northern Railroad Company was sold out. Wherefore, this defendant pleads the statute of two years and the statute of four years in bar of the plaintiffs' demands.

IV-a.

Further pleading, subject to all the positions taken above, and preserving the same, the International & Great Northern Railway Company represents: It does not admit that any such alleged contracts as are set out in plaintiffs' petition were ever made, and denies that they were made; but further represents that if any such agreement or contract as is alleged to have been made with Judge Reagan, representing the citizens of Palestine, was ever made, then such contract was breached and broken by the Houston & Great Northern Railroad Company, its agents and employees and officers in this: The Houston & Great Northern Railroad Company did not move its general offices and headquarters to Palestine and maintain and place its shops there, and round houses there, but more than two years elapsed after the making of said alleged contract and after the time had arrived for the performance thereof, before the International & Great Northern Railroad Company moved to Palestine and established there its headquarters and general offices and shops and round houses, and during such two years and more than two years, the general offices were maintained at Houston, Texas, in defiance of and in breach of said contract, if it ever existed, whereby such contract was breached and broken if ever made, for

more than two years before the institution of this suit. Wherefore the International & Great Northern Railroad Company pleads the Statute of Limitations of two years in bar of plaintiffs' demand and suit.

## V.

Subject to all of its positions taken and referred to above, and insisting upon the same, this defendant specially pleads all of the allegations made by it in the last two subdivisions hereof, and says that plaintiffs' alleged contracts, if they ever existed, either in writing or in parol, were breached by the International & Great Northern Railroad Company, its agents, servants and employees, whereby, if there were ever an action for such breach it is barred, which breach and cause of action, if any there was, arose more than four years before the institution of this suit and more than four years before said railroad was sold out, and more than four years before the receivership thereof commencing in February, 1908. Wherefore, this defendant pleads the statute and statutes of four years' limitation in bar of the plaintiffs' action, if any they have.

## VI.

And further pleading specially, subject to all of its positions taken above, and preserving the same and each of its contentions, the International & Great Northern Railway Company represents:

In the year 1881 all of the officers and employees of the International & Great Northern Railroad Company were moved by it from Palestine, Texas, except its station and local offices there, and all of the employees and general officers and all of the officers and employees belonging to the general offices mentioned in the plaintiffs' petition as far as existing were moved by the International & Great Northern Railroad Company, now sold out, to the City of St. Louis, in the State of Missouri, in breach of the alleged contracts plead by the plaintiffs; and that all

of such general officers and their offices, and the officers and employees mentioned in the plaintiffs' petition as far as existing continued to reside and remain in the City of St. Louis, State of Missouri, in contradiction of the alleged contracts and agreements, from in the year 1881 into the year 1888, whereby such contracts and agreements, if they existed, and if there was any action thereon, were breached and broken; and whereby, if any cause of action existed, a cause of action arose upon such breach and break, which took place in the year 1881, and that there has never been any waiver of the Statute of Limitation by said railroad, or by anyone, in writing or otherwise, or waiver thereof, either of the two years' statute or of any four years' statute. Wherefore the International & Great Northern Railway Company pleads the statute of limitation of two years and the statute and statutes of limitation of four years in bar of the plaintiffs' action.

#### VII.

Further, preserving all of its positions taken above, and insisting upon the same and subject to the same, the International & Great Northern Railway Company specially pleads as follows: The alleged contracts sued on were neither of them and none of them in writing, and the performance was incapable of being completed within the time prescribed by law, upon both sides or upon either side; nor was there any contingency upon such contracts by which there was a possibility of the performance being released or completed by either side within a year. Wherefore, the defendant pleads the statute of frauds in bar of plaintiffs' action, and because such alleged contracts were not reduced to writing.

#### VIII.

Reserving all of its positions taken above and subject to the same, the International & Great Northern Railway Company specially pleads as follows:

1. On the 25th of February, 1908, the Mercantile

Trust Company filed its bill against the International & Great Northern Railroad Company, in the Circuit Court of the United States for the Northern District of Texas, Fifth Circuit, wherein it was set out that on March 1st, 1892, that railroad company had executed its mortgage to the Mercantile Trust Company, Trustee, for the purpose of securing an issue of bonds for the aggregate principal amount of \$3,000,000, bearing interest at the rate of four per cent per annum, payable until and including September 1st, 1897, only, out of the net earnings, and thereafter absolutely. It was alleged that default had been made in payment of interest; that the railroad was insolvent and prayer was made for a decree and foreclosure and sale, and also for the appointment of a receiver. This suit was styled The Mercantile Trust Company, Trustee, Complainant, vs. The International & Great Northern Railroad Company, Defendant, and was numbered 2501 on the Equity Docket of the court. The defendant appeared and on February 25th, 1908, the Court appointed Thomas J. Freeman, Receiver of all of the railroads, lands, franchises and properties of the railroad, covered by the mortgage sued on, and the Receiver proceeded at once to qualify under the terms of this decree and to take charge of, control and operate the properties. This mortgage created a lien upon all the lands, tenements and hereditaments owned by the railroad company, and thereafter to be acquired by it, including tolls, fares, freights, rents, income, issues and profits thereof, and all the reversions, remainder and remainders thereof. No foreclosure has been had of this mortgage, and the suit so brought is still pending, undisposed of, in the United States District Court for the Northern District of Texas, at Dallas, such court being the successor of the United States Circuit Court. Thomas J. Freeman qualified as Receiver on the 28th of February, 1908. A copy of the Bill of Complaint is hereto attached, marked Exhibit "A" and made a part hereof.

2. The suit mentioned in paragraph 1 was docketed

at the Fort Worth division of the Northern District of Texas, but on March 7th, 1908, by agreement of all parties, was transferred by the order of the court from the Fort Worth Division to the Dallas Division, where it is still pending in the United States District Court. A copy of the appointment of the Receiver is hereto attached and is marked Exhibit "B" and made a part hereof.

3. Thereafter, in the same court, The Farmers Loan & Trust Company, as Trustee, applied for permission to file in that court its Bill of Complaint, which was granted by the Judge, April 20th, 1908. Whereupon, on the same day, The Farmers Loan & Trust Company filed its bill versus the International & Great Northern Railroad Company, The Mercantile Trust Company, and Thomas J. Freeman, Receiver, as Defendants, the case being docketed and numbered 2514 Equity.

In this Bill the Complainant set out that, on or about the 15th of June, 1881, the Railroad Company had executed its bonds for the aggregate principal amount of \$10,391,000, payable in gold at the agency of the company in New York City on the first of September, 1909, bearing interest, evidenced by coupons, at the rate of six per cent per annum from March 1st, 1881, payable in gold; that to secure these bonds duly delivered and which had passed to various persons, it executed its mortgage and deed of trust of the same day, whereby it conveyed to The Farmers Loan & Trust Company, as Trustee, of the City of New York, all the lands, except as therein specified, tenements and hereditaments of the railroad company, owned or hereafter to be acquired, including all of its tracks and railroad equipment, with all of its corporate rights, privileges, immunities and franchises, owned or to be acquired, including the franchise to be a corporation, and all the tolls, fares, freights, rents, income, issues and profits thereof, and otherwise as more particularly in the deed of trust and mortgage set out. It was further alleged in this Bill that the authorized bonds had been



issued and negotiated for value, and were valid outstanding obligations of the railroad company. Further, it was alleged that the railroad company had defaulted upon its interest to a large amount and the proceedings by the Mercantile Trust Company, mentioned in sub-section 1, above, were described. It was alleged that there was a prior first mortgage made to Kennedy and Sloan, Trustees, dated November 1st, 1879, that the railroad was embarrassed and insolvent, and prayer was made for the appointment of a receiver and for foreclosure and sale of the properties and a full settlement of all matters. A copy of this Bill and mortgage is attached hereto, marked Exhibit "C". It is now alleged that all allegations and statements of said bill and mortgage are true, and they are made part hereof; and further, all allegations recited above as made in said bill are now alleged to be true; and that the bonds secured by said mortgage were duly issued.

4. Upon consideration of this Bill and having jurisdiction in cause No. 2514, on the 20th day of April, 1908, the Judge of the United States Circuit Court appointed Thomas J. Freeman Receiver as prayed for, and in this cause, all as appears by the decree attached hereto and marked Exhibit "D", and made a part hereof.

5. On the 14th day of May, 1908, George J. Gould, Frank J. Gould, Edwin Gould, Helen M. Gould, Pacific Express Company, Missouri Pacific Railway Company, and George J. Gould, Edwin Gould, Howard Gould, and Helen M. Gould, as Executors of the will of Jay Gould, applied to said Circuit Court for permission to file their bill of complaint against the International & Great Northern Railroad Company, which application was granted the same day.

6. Under the permission given above on the second of June, 1908, in Equity Cause No. 2525, in the Circuit Court of the United States for the Northern District of Texas, at Dallas, the last mentioned applicants filed their Bill in Equity against the International & Great Northern Railroad Company, wherein they set out among other

things, that, in addition to the second and third mortgages executed by this railroad, there was a first mortgage executed by it of date the first of November, 1879, to Kennedy and Sloan, as Trustees, who had been substituted by the Bowling Green Trust Company of New York as Trustee, and that this first mortgage was for the principal sum of \$11,290,000 and was a valid lien upon all of the properties, rights and franchises, of the International & Great Northern Railroad Company. The suits and receiverships above mentioned, as pending and taken out were mentioned, and it was alleged that the Complainants in their various capacities had recovered judgments in the aggregate amounts of \$4,929,108.46 against the International & Great Northern Railroad Company in the 14th District Court of Dallas County, Texas, which judgments were exhibited with the Bill, and it was alleged that none of them had been paid. It was further alleged that the International & Great Northern Railroad Company was wholly unable to pay and discharge said judgments by reason of admitted insolvency and on other grounds; but that the railroad had certain property and assets not embraced in the three mortgages, either intangible or so bound up with properties covered by the mortgage as now to be in the possession of the receiver, and the value thereof inhering in the use of the same in connection with the operation of the railroads; that there was a danger of multiplicity of suits and a necessity for the compact conservation, by the order of the court, of such property and its being brought under the receivership now existing, for which there was prayer and for marshalling the unmortgaged properties and ascertainment of the debts and liens and priorities.

7. On the second of June, 1908, the prayer in the above suit #2525 Equity for the appointment of the Receiver was considered by the Honorable A. P. McCormick, United States Circuit Judge, Fifth Circuit, and thereon a decree entered appointing Thomas J. Freeman upon the terms and conditions set out in the decree of the

court, hereto attached and marked Exhibit "E"; and on this appointment, and all others, Thomas J. Freeman accepted and acted as Receiver.

8. And on or about the same day in Equity 2514 Thomas J. Freeman Receiver, in all three cases, filed his respective applications that these causes should be consolidated. Thereupon, the court made his order of June 2nd, 1908, directing their consolidation and applying previous decrees of the Court and orders as in the order of consolidation set out, hereto attached, marked Exhibit "F", hereto attached and made a part hereof, and consolidated cause being No. 2501.

9. On the 7th of June, 1909, The Farmers Loan & Trust Company, as Trustee, in Equity 2501, the consolidated cause, having previously obtained the leave of the court, filed a Supplemental Bill, affirming the allegations of their original Bill, and setting out additional defaults as alleged and praying for the benefit of the proceedings taken under the original bill for relief already prayed and otherwise as in the Supplemental Bill set out, a copy whereof is attached hereto and marked Exhibit "G" and made a part hereof. The allegations in this supplemental bill contained are now alleged to be true and that the said mortgage, as well as the first and second mortgages, were all duly issued and authorized regularly by the directors and stockholders of said road.

10. The above proceedings being had and commencing with the institution of the first suit, and thereafter, said Circuit Court entered various administrative orders providing for the maintenance, control and management of the properties and their protection, the issue of receiver's certificates to raise necessary funds, the payment of interest on the first mortgage bonds, all as sufficiently appears in the decree next exhibited herewith; and proceeding on the demand of the trustee of the second mortgage bonds, on May 10th, 1910, the court entered the decree of foreclosure of the second mortgage ascertaining and settling various indebtednesses and matters at issue

and directing the properties of the railroad to be sold upon the terms and conditions and all as in the decree set out. This decree foreclosed the lien upon all of the properties, tangible and intangible, together with all the corporate rights, privileges, immunities and franchises of the defendant and all other properties as in the decree stated, and declaring that all of the right, title, estate and equity of redemption of the defendant and all parties to Equity Cause 2514, and of all persons claiming or to claim under them, or either of them, of, in or to the premises, property and franchises, and every part and parcel thereof, should be forever barred and foreclosed, and also that the lien of the second mortgage upon the properties was prior and superior to every other lien in favor of any party to this cause, and was subordinate only to the lien of the first mortgage, except as in the decree stated, and also that the Master Commissioner making the sale should receive no bid from any person on the property until said person should have deposited with him the sum of \$100,000, to be returned in case his bid was not accepted, but to be held in case his bid was accepted on account of the purchase price; and that a further payment for the property might be made in bonds and coupons secured by the second mortgage, taken at a valuation equal to the amount said bonds and coupons would be entitled to receive in cash out of the amount bid for said property, on the terms and conditions as in the decree stated; and further, that the property should be offered for sale subject to the first mortgage and to any unpaid indebtedness or liability contracted or incurred by the defendant in the operation of its railroad, which the court might thereafter order or decree to be prior or superior to the lien of the second mortgage, except such as should be paid or satisfied out of the income of the property in the hands of the receiver under the orders of the court, entered or to be entered; and subject also to such debts, claims, liens and demands of whatsoever nature theretofore incurred or created or which

might thereafter be incurred or created by the receiver under orders of the court theretofore or thereafter entered, and not paid or to be paid out of the proceeds of the sale. Also, it was decreed that the Master Commissioner by public notice should require holders of any claim for unpaid debts or liabilities to present the same for allowance; and that, if they should not be presented within three months after the first publication of such notice, they should not be enforceable against the receiver or the property sold or the purchaser or his successors or assigns. It was furthermore decreed that the form of the conveyance to the purchaser should be settled upon by the Master Commissioner or the court, or a judge thereof, should there be any question thereon; and that, in default of such conveyance, the decree should operate as a conveyance, and that the purchaser or purchasers, his or their successors and assigns, should have the right, within six months after the completion of the sale, or delivery of the deed of the Master Commissioner, to elect whether or not to assume or adopt any lease or contract made by the defendant railroad company, and that such purchaser or purchasers, his or their successors and assigns, should not be held to have assumed any of such leases or contracts which he or they should so elect not to assume, such election to be shown by filing with the Clerk of this Court, from time to time, within said period, a description of such leases or contracts which he or they should so elect not to assume; and it was further provided in this decree that all questions not thereby disposed of, including the discharge of the receiver and the settlement of his accounts, and including the disposition of all claims theretofore filed or thereafter to be so filed, in accordance with the provisions of the decree, were reserved by the court for future adjudication, and it was declared: "The court reserves jurisdiction of this cause and the property affected by this decree for the purpose of final disposition of all such questions and matters; and any party to this proceeding and any claimant whose

claims have been or shall be so filed herein, may apply to the court for further orders and directions at the foot of the decree"; and otherwise and generally in said decree, the court reserved jurisdiction directly and impliedly of the properties and for the purpose of enforcing the decree in all of its terms. A copy of this decree is attached hereto and marked Exhibit "H" and made a part hereof.

11. On Sept. 7th, 1910, the court entered an order deferring the sale provided for in the decree last above set out to October 6th, 1910, or to some later date to which the same might be again adjourned.

12. On November 28th, 1910, the court made an order directing that the case of the Marshall Car Wheel & Foundry Company, Complainants, vs. The International & Great Northern Railroad Company, et al, Defendants, No. 2623, in Equity, should be consolidated with the previously consolidated cause, and that all orders and decrees in said last cause be extended and applied to the newly consolidated cause.

13. The sale was again adjourned by the order of the court, and under its order, or in accordance therewith, to May 16th, 1911; but on the 12th of May, 1911, the court filed another order, decreeing that the sale should be adjourned to June 13th, 1911, a copy of which last order is hereto attached, marked Exhibit "I".

14. The sale was made as provided in the decree by the Master Commissioner at public outcry, on June 13th, 1911, at Palestine, Texas, to Frank C. Nicodemus, Jr., and duly reported to the court and by the court in all things approved, as appears by the order of court dated September 25th, 1911, a copy of which is attached hereto and marked Exhibit "J" and made a part hereof, and also a copy of the report of sale marked Exhibit "J-1" and made a part hereof.

15. By charter dated the 8th of August, 1911, the International & Great Northern Railway Company, the defendant herein, as an independent and new railway company, was incorporated under the laws of the State of

Texas, and a copy of the charter of that railway is attached hereto and marked Exhibit "K" and made a part hereof. This charter authorized the defendant to acquire, own, maintain and operate the railroads heretofore forming the International & Great Northern Railroad Company and which had been purchased by Frank C. Nicodemus, Jr., at the sale of the properties mentioned above, and all as stated in said charter.

16. On the 31st day of August, 1911, a deed was executed, whereby the Master Commissioner, the International & Great Northern Railroad Company, Thomas J. Freeman, Receiver, Frank C. Nicodemus, Jr., the above purchaser, and The Farmers Loan & Trust Company, Trustee of the second mortgage, conveyed to the International & Great Northern Railway Company the properties purchased at the sale, all as appears by a copy of the deed hereto attached, marked Exhibit "L" and made a part hereof. Having acquired those properties the International & Great Northern Railway Company has since such acquisition operated the same under said charter and the laws of Texas.

17. The amount bid at said sale by Nicodemus was \$12,645,000 of which as prescribed by the decree he deposited at the time of his bid \$100,000 and thereafter on or about September 13, 1911, he paid the additional amount of \$144,253.45, making the total cash payment \$244,253.45, and he made the remaining payments under the terms of the decree as follows, and through the Farmers Loan & Trust Company in second mortgage bonds of the face value, that is, for the principal amount as next stated to which was to be added the amount of accrued interest, to-wit:

On or about September 13, 1911	\$ 164,500
On or about September 13, 1911	9,182,000
On or about September 13, 1911	990,000

Total in bonds, principal, not including interest, \$10,-336,500. To these bonds were attached the coupons ma-



turing March 1, 1908, and subsequently, and interest was to be added.

Whereby by such payments the total amount of the bid under the terms of the decree of \$12,645,000 was paid.

The apportionate amount applicable out of the bid to the second mortgage bonds not used as means of payments was to-wit, of the principal amount of \$54,500 was paid to apply thereto in the sum of \$65,383.89, as appears by the report of the Master Commissioner set out above.

It thus appears that the purchase was made with the decree with the exception of \$244,253.45; which decree and the bonds carried thereinto and representing the same it thus appears was owned by Frank C. Nicodemus, Jr., or the persons whom he represented at the time of the purchase, and also that there was a deficit and the amount of the decree was not realized.

18. The above causes and consolidated cause are still pending upon the docket of the United States District Court for the Northern District of Texas, at Dallas, Texas, successor to the United States Circuit Court for the Northern District of Texas.

19. The International & Great Northern Railway Company, the defendant, here now states and represents that it purchased the above described properties upon the faith, guarantees, and statements of the proceedings held in the United States Court and the reservations of the decree therein.

20. All the notices provided for in the decree of foreclosure and the supplements thereto were duly given both of the making of the sale and of the invitation to all claimants to intervene and present their claims; they being given and published exactly as provided for by the decree of the court.

21. The International & Great Northern Railway Company, exercising the privilege and right provided for by the decree, the International & Great Northern Railway Company being authorized and directed so to do, by resolution of its Board of Directors, a copy of which is

attached hereto, marked Exhibit "M", did within six months after the completion of the sale and the delivery of the deed of the Master Commissioner, elect that they would not assume or adopt, and that it, the International & Great Northern Railway Company electing for itself, would not assume or adopt any contract whatsoever made either by the International & Great Northern Railroad Company or the Houston & Great Northern Railroad Company with the plaintiffs herein or any of them, and which they now sue on; such election being shown by filing with the Clerk of the United States Circuit Court at Dallas, Texas, within said six months, a description of such contracts which were elected not to be assumed; a copy of which election and statement is attached hereto and marked Exhibit "N"; and further, within said time exercising due precaution, though not required as it is advised by the decree of the court, this defendant caused notice of its intention and election not to perform or assume or adopt said alleged contracts sued on, to be served upon the Commissioners' Court of Anderson County, and the City Council of the Town of Palestine, by reading and delivering the same to said bodies at regular meetings, and copies of such notices are hereto attached, marked Exhibits "O" and "P" respectively. In making such election this defendant did not acknowledge the existence of the alleged contracts sued on, which it had always denied did exist, but declared and elected not to adopt and assume them, if they existed.

22. So pleading and alleging, this defendant represents that this litigation now pending in this court is in defiance of and in contradiction to the decree of foreclosure entered by the United States Circuit Court for the Northern District of Texas in consolidated Equity No. 2501, and which is set out above, and to the proceedings consequent and in pursuit thereof, and the sale made thereunder and confirmed by the court.

23. That all possible matters for litigation, involved in this case, if they now can be litigated, were reserved in

such decree and proceedings in the United States Court and are only subject to be litigated in that court.

Wherefore, upon the above, the International & Great Northern Railway Company represents:

(a) The decrees and proceedings in the United States Court disposed of and barred this action.

(b) If such decrees and proceedings did not dispose of and bar this action, then the litigation of all and every question involved in this suit was reserved by that court for its sole adjudication, and for the adjudication of its successor, the United States District Court for the Northern District of Texas.

(c) That the effect of such decrees and proceedings in the United States Court was to assure to any purchaser or person holding under such purchaser the right that any such claim or causes of action, as is asserted herein, as a liability of the sold out railroad or its constituent should be asserted and litigated only in the United States Circuit Court, now succeeded by the United States District Court, for the Northern District of Texas, upon which assurances the defendant purchased the properties and upon which it relied and has relied from the beginning, and that it should not be sued in any other forum on account of any contract or liability of the International & Great Northern Railroad Company or any of its constituents.

(d) Wherefore, relying upon the decree of foreclosure of the United States Circuit Court and the other proceedings therein, the International & Great Northern Railway Company respectfully submits to this court that each and every of the questions raised herein involves the jurisdiction of the United States District Court for the Northern District of Texas, and infringes upon such jurisdiction and the express and implied terms and reservations of its decree of foreclosure and other decrees and proceedings set out above; all of which involve a Federal question, now seasonably thus presented to this court in bar of this suit and in defense thereof in this forum; and

it is respectfully represented to this court that it has no power or right to place itself in conflict with the United States Court, first acquiring jurisdiction upon the grounds set out, and this defendant invokes the Constitution and statutes of the United States, and the powers, jurisdiction and decision of said United States Court; and also, not limiting the above, Section 709 of the Revised Statutes of the United States carried into Section 237 of the Act of Congress of March 3, 1911 (36 Stat., 1087) in protection of the title, right, privileges and immunities, established by and acquired under the authority of the decree and proceedings of said court.

### IX.

Further, specially pleading, subject to its various positions taken above, and insisting upon and preserving each of them, the International & Great Northern Railway Company represents as follows:

1. It repeats and re-avers all of the allegations contained in Section VIII. of this answer, being sub-sections 1 to 21 inclusive, and refers to the same and repeats the same as a part of this plea.

2. By the act of September 1st, 1856, the legislature of the State of Texas, constituted a corporation, designated the Houston Tap and Brazoria Railway Company, with the right of locating, building, etc., a railroad from the City of Houston to the Brazos River and to the Colorado River, and constituting such railroad a public carrier.

3. In Section 8 of the act it was provided that there should be an election held in the City of Houston of not less than five directors after giving public notice of the election; and furthermore, that "a majority of the Board of Directors shall have the power of a full Board, and all conveyances and contracts executed in writing signed by the President and countersigned by the Treasurer or any other officer duly authorized by the directors under the seal of the company and in pursuance of the vote of the directors", shall be valid and binding.

4. The Houston Tap and Brazoria Railway Company was constructed to the Brazos River in Brazoria County under this charter, and falling in debt to the State of Texas on account of money lent from the school fund, it was provided by the act of the legislature of August 15th, 1870, that the road should be sold. This was entitled "An Act to provide for the sale of the Houston Tap & Brazoria Railway" and under this act the road was duly sold and afterwards purchased by the Houston & Great Northern Railway Company with all its properties and franchises.

5. The act incorporating the Houston Tap and Brazoria Railway Company was entitled "An Act to incorporate the Houston Tap and Brazoria Railway Company."

6. The Houston & Great Northern Railroad Company was incorporated by an act entitled "An Act to incorporate the Houston & Great Northern Railroad Company", by the Legislature of the State of Texas October 22nd, 1866, by which T. M. Bagby and others were authorized to open books and receive subscriptions and proceed to the incorporation of the road.

In pleading special portions of the acts plead anywhere in this answer, it is not intended not to plead or refer to the whole of it, nor is the position waived that it is necessary to plead the same, but they are all plead by their respective titles, and so of all acts incorporating railroads or consolidating them, herein.

7. In Section 2 of said act, it was provided "A majority of the directors shall constitute a quorum to do business and shall have the power of a full board and all conveyances and contracts in writing signed by the President and countersigned by the secretary or any other officer duly authorized by the Board of Directors under the seal of the company, when the same is in execution of an order of the Board, shall be binding and valid."

8. By Section 6 of the act the company was author-

ized to construct a railroad from the City of Houston northward to Red River.

9. By Section 11 of said act it was provided "that said company shall have the right to form a junction with any other railroad at any point between Houston and Clarksville or at either of its termini."

10. By Section 13 of the act it was provided "The annual meeting of the stockholders of this company shall be held at the principal office in the City of Houston on the first Monday of December of each year, which shall be a day for the transaction of business by the stockholders, at which time the annual election of directors shall take place."

11. By Section 15 of the act it was provided: "This charter shall remain in force for the period of 50 years from the date of completing said Railway; provided the conditions set forth are fully complied with."

12. The principal office of the Houston & Great Northern Railroad Company was established, in accordance with the provisions of its legislative charter, in the City of Houston in Harris County, Texas, where was the domicile of the corporation.

13. The control and execution of contracts, under the provision of the charter and the provisions of the by-laws of this railroad, and of the International & Great Northern Railroad, were and continued to be lodged with the Board of Directors, which alone had the power to make contracts.

14. The Victoria & Columbia Railway was incorporated November 13th, 1866, by the act of the Legislature of Texas of that date, entitled "An Act to incorporate the Victoria & Columbia Railway Company" but no railroad was ever constructed under this act.

15. The Huntsville Branch Railway Company was incorporated by the act of the legislature of Texas, dated April 4th, 1871, by an act entitled "An Act to incorporate the Huntsville Branch Railway Company" for the purpose of constructing a railroad from a convenient point

on the Houston & Great Northern Railroad to the town of Huntsville in Walker County, Texas.

16. On May 8th, 1873, the Legislature of the State of Texas passed an act entitled "An Act to consolidate the Houston Tap and Brazoria Railway, the Huntsville Branch Railway, and the Victoria & Columbia Railroad with the Houston & Great Northern Railroad" whereby it was declared that all of said railroads, except the Houston & Great Northern Railroad were "made and declared to be to all intents and purposes in law a part of the Houston & Great Northern Railroad, and shall be under the control and management of the said Houston & Great Northern Railroad in like manner as every other part of their railroad, and all rights, privileges and franchises granted or secured in the charter of either or all of the aforesaid corporations, shall inure to and be exercised and enjoyed by the said Houston & Great Northern Railroad Company as fully and to the same intent as they could have been by either of said companies."

17. The International Railroad Company was chartered August 5th, 1870, by the act of the legislature of the State of Texas on that date, whereby James W. Barnes and others and their successors and associates were constituted into a body corporate, which act was entitled "An Act to incorporate the International Railroad Company and to provide for the aid of the State of Texas in constructing the same."

18. By Section 2 of the act this road was authorized to build and operate a railway and telegraph line from a point on Red River across the State of Texas by Austin and San Antonio to the Rio Grande River, at or near Laredo, and otherwise as in the act provided.

19. By Section 14th of the act it was provided: "Said company shall have the right to connect itself with any other railroad company within or without the State, and under such terms as to it shall seem best to operate and maintain its said railroad in connection or consolidation with any such other railroad company."



20. By Section 16 of this act it was provided: "The State expressly reserves the right to regulate the rates of freight and passage upon said railroad, making no distinction between said railroad or any other in said State."

21. By Section 7 of the act it was provided that "The immediate control and direction of the affairs of said company shall be vested in a Board of not less than five directors who shall elect from their number one president and one vice president."

22. By Section 8 of the act it was provided: "The principal office of said company shall be established at such point on the line of said railway as may be deemed most convenient for the transaction of its business and may be moved, from time to time, to such places on said line as the progress of the work of construction may render expedient and necessary."

23. In the years 1872, 1873, or 1874, or both, by agreements of the Board of Directors and of the stockholders, the International Railroad and the Houston & Great Northern Railroad were consolidated.

24. By the act of April 24th, 1874, entitled: "An Act to authorize the International & Great Northern Railroad Company to issue bonds" the existence of the consolidation was recognized as an existing fact, and the consolidated road authorized to issue bonds and borrow money and execute a mortgage and convert the bonds of the International Railroad or of the Houston & Great Northern Railroad into the stock of the International & Great Northern Railroad Company.

Said Act of the Legislature validating such consolidation provided in substance and effect "that all acts heretofore done in the name of either of said Companies shall have the same *binding force* and effect upon the said International and Great Northern Railroad Company, that they have had upon the respective Companies; and all rights and liabilities existing between said Companies, or either of them and the State, or third parties shall inure to said International and Great Northern Railroad

Company the same as they existed with the respective Companies."

25. By the act of March 10th, 1875, of the Legislature of Texas, entitled: "An Act for the relief of the International Railroad Company, now consolidated with the Houston & Great Northern Railroad Company under the name of the International & Great Northern Railroad Company," it was recited that the two roads had been consolidated under the name of the International & Great Northern Railroad Company and provision made for a settlement of certain matters between the State and the International Railroad, and the issue of land certificates in settlement thereof on the terms of the act.

26. By reason of the above legislative charters and acts of the respective corporations and legislation, the International & Great Northern Railroad Company, now sold out, was formed, not under one charter, but by the consolidation set out above, there never having been issued to it after consolidation a new charter.

27. After the formation of the International & Great Northern Railroad Company, various additions and extensions of trackage were made to the properties of the International & Great Northern Railroad Company.

28. The International Railroad Company commenced the construction of its road and had its headquarters at Hearne, Texas, where they remained until the consolidation with Houston & Great Northern Railroad and until they were moved to Houston, Texas.

29. On moving the headquarters and general offices of the International Company to Houston, Texas, they were consolidated at Houston, Texas, in Harris County, with the general offices and headquarters and domicile of the Houston & Great Northern Railroad Company, where the domicile of the Houston & Great Northern Railroad Company was.

30. The headquarters and general offices of the consolidated International & Great Northern Railroad Company remained at Houston, Texas, the headquarters of

the company and where it was provided the domicile and principal office of the Houston & Great Northern Railroad Company should be. The terms of the consolidation subjected the consolidated company to the obligations and duties of both constituents.

31. The headquarters and general offices of the International & Great Northern Railroad Company remained at Houston, Texas, until in June, 1875, when they were removed to Palestine, Texas, whence they were removed to St. Louis, Mo., in the year 1881.

32. By the by-laws of the Houston & Great Northern Railroad Company and the International Railway Company (binding on and assumed by the International & Great Northern Railroad Company) and by the by-laws of the International & Great Northern Railroad Company, as well as by the laws of the State, the control of the respective corporations and of the consolidated corporation were lodged in the respective Boards of Directors, by which all contracts had to be approved in order to become the contracts of the roads, and this was also provided for in the charters of the constituent companies, whereby the control and the power to make contracts was lodged in such Board or Boards.

33. Neither by the charters nor by the by-laws, all made in conformity to the general law, was Grow or Hoxie authorized to make the agreements alleged by the plaintiffs to have been contracts formed by them.

33-a. On or about the 1st of April, 1871, the International Railroad Company, under the resolutions of directors and stockholders, executed a mortgage and deed of trust to John A. Stewart and William H. Osborne as Trustees, which was duly recorded in the several counties of the State of Texas and in Anderson County. This mortgage was executed for the purpose of securing certain bonds, of which there was outstanding at the date of the foreclosure thereof, next below described, 4,224 bonds for \$1000 each of the date of the mortgage, payable in United States gold, and bearing interest at the rate of

seven per cent per annum, payable semi-annually in gold.

33-b. Default being made on said bonds or the interest, they were sued on in the United States Circuit Court for the Western District of Texas, at Austin, in Equity Case No. 138 for foreclosure and recovery, in which suit the Trustees Stewart and Osborne were complainants and the International Railroad Company, the International & Great Northern Railroad Company, John S. Bonds and Thomas W. Pearsall, Trustees, etc., Moses Taylor and William Dodge, Trustees, etc., were defendants; and in this suit it was decreed that there was due the complainants and the holders of the bonds or coupons by the International Railroad Company, and its successor, the International & Great Northern Railroad Company, on the 1st of April, 1879, \$5,457,678.20 in gold, and that, the International Railroad and International & Great Northern Railroad were severally chargeable with the whole amount, and that the complainants were entitled to collect from these companies and from the mortgaged properties, directed to be sold, this amount, together with the charges, expenses, costs and allowance in the decree provided for. Provision was made for the sale of the property under the direction of Burr G. Duval, the Master, that it should be sold in one parcel and conveyance made as in the decree provided. This decree foreclosed the lien and mortgage as ascertained and stated in the decree, upon the International Railroad Company's railway and all of its properties as in the decree set out, together with all the corporate rights, privileges and franchises of said railroad, including the franchise to be a corporation, which the International Railroad possessed on the 1st day of April, 1871, or which it afterwards acquired and which was necessarily material and useful in connection with the ownership, use and operation of the said railway. A copy of the decree, marked Exhibit "Q" is attached hereto and made a part of this pleading.

33-c. As authorized and directed by this decree, Du-

val, the Master, made sale of said properties included in the mortgage and foreclosed upon as alleged above and as ascertained and settled by the decree of the court, for a consideration of \$500,000 more or less, to John S. Kennedy and Samuel Sloan as Trustees, and to the survivor of them in fee simple absolute.

33-d. The sale last mentioned above being reported by the Master, Duval, to the court, the same court on the 4th of August, 1879, entered its decree confirming the sale and directing the master upon the payment to him of all balance due of the bid, to convey the property sold to Kennedy and Sloan, Trustees, by a conveyance vesting said properties, including the chartered powers and privileges of the International Railroad Company, and of the International & Great Northern Railroad Company so far as the latter succeeded to the title of the International Railroad Company and the true ownership of the road, with all the powers, rights, franchises, privileges and benefits of the International Railroad Company and of the International & Great Northern Railroad Company in Kennedy and Sloan as provided in the decree of foreclosure and as provided in the decree confirming the sale, all as appears in a copy attached hereto, made a part hereof and marked Exhibit "R".

33-e. On or about the 14th of October, 1879, Duval, the special master, in pursuance of the order of sale, the decree of foreclosure, the terms of the mortgage foreclosed, all of which were ascertained and truly settled and stated in the decree, conveyed to Kennedy and Sloan all of the property sold, reciting the payment to him of the full amount of the bid, and conveyed the International Railroad Company's railway and all its corporate rights, privileges and franchises, and also the franchises and chartered powers and privileges of the International & Great Northern Railroad so far as the latter succeeded to the title of the International Railroad, and all property covered by the mortgage described in the decree, a copy of which deed is hereto attached and made a part hereof

and marked Exhibit "S", which deed having been duly executed was duly delivered.

33-f. On the 15th of January, 1874, the International Railroad Company under due resolutions of its directors and stockholders, executed a mortgage and a deed of trust to John S. Barnes and Thomas W. Pearsall securing the indebtedness next below stated, as ascertained and settled in the decree of foreclosure of such mortgage, and also on the 15th of January, 1874, the Houston & Great Northern Railroad Company under adequate and due resolution executed a mortgage to the said Barnes and Pearsall as Trustees to secure an indebtedness as in the decree next below stated and in the mortgage set out, and these mortgages mortgaged the property and conveyed the property to trustees which is described and ascertained and stated in the decree of foreclosure next below described.

33-g. Default being made on such mortgages, John S. Barnes and Thomas W. Pearsall as Trustees sued the International & Great Northern Railroad Company in the United States Circuit Court for the Western District of Texas at Austin, in Equity No. 132 on the docket of that court, and the case proceeded for foreclosure of the above mortgages on August 4, 1879. The court entered its decree for certain amounts and for foreclosure, wherein it was decreed that the mortgages above mentioned were valid; that there was outstanding on them 2,448 bonds for \$1000 each secured by the mortgage of the International and 3,062 bonds for \$1000 each secured by the mortgage of the Houston & Great Northern; that the International & Great Northern was the successor of both mortgagors and had assumed their obligations; and that there was due to the complainants interest and principal on said mortgages \$8,297,226.93; that by the mortgage of the International Railroad mentioned, all of its railway was covered and properties as in the decree stated, including all corporate rights, privileges and franchises of that company, whether then held or thereafter ac-

quired, and that, by the mortgage executed by the Houston & Great Northern there was mortgaged all of that company's railway built or to be built and as in the decree described, and all of its franchises and rights, including all of its property, real and personal; that both series of mortgages had been defaulted upon and that all of the property mortgaged by the International Railroad should be sold as one property, and all of the property mortgaged by the Houston & Great Northern Railroad be sold as one property; and it was otherwise decreed as in the decree set out, that the sale should be made to the highest bidder without reserve. A copy of said decree in cause No. 132 is attached hereto and made a part hereof and marked Exhibit "T."

33-h. Acting under the foregoing decree, the Master, Duval, sold the above described properties to John S. Kennedy and Samuel Sloan, Trustees, and made report on his sale to the court, which thereupon on the 14th of August, 1879, confirmed the sale and directed the Master to convey to the said Kennedy and Sloan all the property so sold, vesting in them title thereto and the true ownership of said roads, with all the powers, rights, privileges, franchises and benefits of the International Railroad Company, of the Houston & Great Northern Railroad Company, and of the International & Great Northern Railroad Company, on the terms of the decree of approval, which is attached hereto, marked Exhibit "U," and made a part hereof.

33-i. In pursuance of this decree of approval Duval, the Master, executed a deed to Kennedy and Sloan, Trustees, the purchaser, whereby he conveyed to them all of said properties so sold, and to the survivor of them, in fee simple as Trustees, a copy of which deed is attached hereto, marked Exhibit "V," and made a part of this pleading.

33-j. On or about the ——— day of ——— the Houston & Great Northern Railroad Company, and not later than the month of February, 1873, authorized and di-



rected the execution of a mortgage and deed of trust, which was duly made to Moses Taylor and W. E. Dodge to secure a bond issue, and as more completely described in the next number below. This bond issue was defaulted upon.

33-k. The bond issue being defaulted upon, Moses Taylor and W. E. Dodge, Trustees in the mortgage, as complainants, sued the Houston & Great Northern Railroad Company, the International & Great Northern Railroad Company, John A. Stewart and William H. Ozman, Trustees, etc., Hayes, Receiver, and Barnes and Pearsall, Trustees, in Equity Cause No. 137, in the United States Circuit Court for the Western District of Texas at Austin, and on April 15, 1879, that court entered its decree for the recovery of money and foreclosure, wherein it was stated that the material facts set forth in the bill of complaint were true, and decreed that the International & Great Northern Railroad Company was the successor and assignee of the Houston & Great Northern Railroad Company and had assumed its obligations, including the bonds sued on; and that on April 1, 1879, there was unpaid on said bonds \$5,404,827.75; that the mortgage and deed of trust was duly executed and that by it the Houston & Great Northern Railroad Company had mortgaged all of the company's railway, built or to be built, together with all of its franchises and rights and all of its property, real and personal, except certain lands, and all as in the decree more fully set out; and that both the Houston & Great Northern and its successor, the International & Great Northern Railroad Company, had defaulted on the interest on the bonds and that there should be a foreclosure, which was decreed, and that the property should be sold by Duval as Special Master on the terms stated in the decree. This decree is attached hereto, is marked Exhibit "W," and made a part hereof.

33-l. Acting under such decree and in accordance therewith, Duval made sale of the properties described in the decree, and reported the same to the court, and said

court on August 4, 1879, confirmed the sale which had been made to the above men, Kennedy and Sloan, as Trustees, for \$500,000 in gold, and directed the Master to convey to the said Kennedy and Sloan, as Trustees, upon their making complete payment, the road-bed, tracks, franchises and chartered powers and privileges of the Houston & Great Northern, and International & Great Northern Railroad so far as the latter succeeded to the title of the Houston & Great Northern Railroad, granted to them by virtue of their charter or by any laws, and all the powers, rights, privileges and franchises and properties as in the decree of foreclosure, and the decree of approval, or either, stated, which decree of approval is hereto attached, marked Exhibit "X," and made a part hereof.

33-m. Acting in accordance with this decree, the said Duval as Special Master by deed dated the 14th of October, 1879, conveyed to Kennedy and Sloan, Trustees, all and singular the railway of the Houston & Great Northern Railroad Company, built and to be built, its franchises and rights, and other properties as in the deed described, including the franchises and chartered privileges of the Houston & Great Northern Railroad Company and the International & Great Northern Railroad Company so far as the latter succeeded to the title of the Houston & Great Northern Railroad Company granted them by virtue of their charter or by any other laws of the State of Texas, Kennedy and Sloan having made complete payment, and all as is more completely described in the deed hereto attached, marked Exhibit "Y," and made a part hereof.

33-n. The receiverships or receivership involved in the above mentioned suits, upon which the sales resulted in 1879, were all wound up and discontinued.

33-o. On or about November 1, 1879, John S. Kennedy and Samuel Sloan, as Trustees, executed a deed to the International & Great Northern Railroad Company wherein they recited that they had acquired the proper-

ties conveyed to them by three deeds executed by Duval as Special Master and above set out, and that the International & Great Northern Railroad Company had agreed to purchase all the properties so acquired under said three deeds in consideration of bonds in the amount of 5,374 bonds for \$1000 each and 500 bonds for \$500 each, secured by a purchase money mortgage; and the further amount of 4,474 bonds of \$1000 each and 500 bonds of \$500 each secured by a purchase mortgage, the last two sets of bonds to be secured by a second mortgage. The deed then states that Kennedy and Sloan, as Trustees, in consideration of the sum of \$10,348,000 paid by these bonds, the receipt of which was acknowledged, conveyed to the International & Great Northern Railroad Company, its successors and assigns, in fee simple absolute forever all and singular the railway of the International Railroad Company, together with all of its properties whatsoever, and all corporate rights and privileges and franchises of the International Railroad Company, and all and singular the railway of the Houston & Great Northern Railroad Company, built and to be built, with its right of way, properties, franchises and rights, and all of its property, real and personal, except lands other than those necessary for right of way, depot and shop grounds, and all of the franchises and chartered powers and privileges of the International Railroad Company and of the Houston & Great Northern Railroad Company, and of the International & Great Northern Railroad Company, granted to them by virtue of their charters or any other laws, and all of the properties whatsoever of said railroads, which deed was duly delivered and executed to the International & Great Northern Railroad Company.

34. Wherefore, upon all of the matters above, the International & Great Northern Railway Company represents that the plaintiffs can not prevail, and pleads all of the above in defense to their suit, not waiving its reliance upon all of the above, for every defense which can

be based thereon or any part thereof; the defendant on the above represents:

(a) All issues herein involved have been disposed of and are barred by the decrees of the United States Circuit Courts hereinabove set out, and the proceedings in those cases, which are now plead in complete bar of this suit.

(b) Should there be any matter remaining undisposed of by the litigations and proceedings in the United States Circuit Court above set out and resulting in foreclosure, yet by the decree of foreclosure, being hereto attached, and the several matters therein stated, and the express reservations of that decree, and the implied reservations of that decree and the implications and warranties and guarantees to the purchaser at the sale under that decree, that all liabilities and claims should be matters to be disposed of only in that court or litigated there, Federal question is now raised, to-wit: The reservations of that decree and the right of the United States District Court alone to pass upon any question not then disposed of, including every issue, either of law or fact, tendered in this case, which Federal question is now expressly opposed to this litigation, both because it appears that the Federal Court disposed of every matter herein involved, and this proceeding is conducted in conflict with the proceedings in that court; and because if they were not so disposed of they were reserved for consideration and litigation in that court alone, and so guaranteed to the purchaser and every person holding under him, under said decree hereto attached, marked Exhibit "H."

(c) It appears above that the second mortgage bond-holders buying under the said foreclosure decree bought with their decree and second mortgage bonds, except to the extent of \$244,253.55, which they paid in cash, buying through Nicodemus, who was and who is now alleged to have been their agent. But such second mortgage bond-holders bought under such burden and losses that there availed for the payment of their second mortgage

bonds an insufficiency, the amount of their bid being not less than \$317,387.72 short of the amount due on such bonds, and they buying under the obligations and liabilities of the receiver and the decree of foreclosure to their loss.

(d) It is pointed out in this connection that the plaintiffs rely upon the act of the legislature of Texas of 1889, which was approved March 27th, 1889, and is entitled "An Act to require all railroad companies to keep and maintain permanently their general offices, machine shops and round houses within the State of Texas at certain places, and to keep all books, accounts, etc., at said offices, and to provide penalties for failing to comply therewith."

(e) Also in this connection it is now alleged that the plaintiffs claim and so assert that by the said act of March 27th, 1889, now carried into the Revised Statutes of the State of Texas of 1911, and contained in Articles 6423, 6424 and 6425 thereof, they acquired a burden or lien upon the properties, the intangibles and franchises, of the defendant and a security or servitude against the same and a right of performance against and out of and by the same given by the retroactive act of 1889.

(f) In this connection it is alleged that, if there was any contract made for the location of the headquarters and shops at Palestine, which is not admitted, then that such contract or contracts were not legally definable in the terms of the act of 1889 and that the act of 1889 has attempted to put additional burdens and give additional security and make additions to such contract or contracts, whereby the obligation of the contract or contracts, if they ever existed, is violated.

(g) Further, the mortgage of 1881 foreclosed in the United States Court under the decree set out above, and under which this defendant, and the sale thereunder, has acquired the properties and franchises of the International & Great Northern Railroad Company, preceded the act of 1889, and the trustee and bondholders thereon did

not know and could not have known of the existence of any such alleged contracts as are sued on in this case; and if they did know of the same, they were purely personal contracts and unsecured, but the plaintiffs now insist that they are secured *in rem* and by the retroactive act of 1889.

35. Therefore, the International & Great Northern Railway Company opposes to any recovery by the plaintiffs and to their maintenance of this case, the following defenses, now seasonably presented as Federal questions and founded upon the Constitution of the United States of America:

(a) The act of 1889, and carried into Articles 6423, 6424 and 6425 of the Revised Statutes of Texas, as relied on and applied by the plaintiffs in this case, is unconstitutional and void and violative of sub-section 1 of Section 10 of Art. 1 of the Constitution of the United States of America, prohibiting any State from passing a law impairing the obligations of contracts; in that the attempt to enforce the act of 1889 above mentioned, of the Legislature of the State of Texas, against this defendant as giving a lien and fixing a burden and service upon the properties and adding to the obligations, if any, of the alleged contracts, and attempting to attach and add to those alleged contracts, duties and conditions as set out in the statute, is null and void when applied to the prior contracts alleged in this case, and violates their obligations.

(b) Because of the act of the Legislature of 1889 and Articles 6423, 6424 and 6425 of the Revised Statutes of the State of Texas, are violative of Sub-section 1 of Section 10 of Art. 1 of the Constitution of the United States and impair the obligation of contracts, therein prohibited to be done by the law of any State, because they violate the contract and mortgage duly executed between the International & Great Northern Railroad Company, now sold out, and of the trustee of the second mortgage and the bondholders therein secured; which mort-

gage has been settled, ascertained and declared by the decree of foreclosure of the United States Court, all as set out above; in that said act of 1889 and as carried into the present Revised Statutes of the State of Texas, adopted in 1911, and as asserted and claimed to be by the plaintiffs, adds to and places burdens on the original contracts, if any, stated by them, and as claimed by them secured such contracts by such subsequent law as against the properties or property or some of them now held by the defendant and owned by it under foreclosure sale, as set out above; and in that such statutes as claimed by the plaintiffs by such subsequent act of 1889, convert what were before at most merely personal contracts into secured contracts and obligations as a burden upon the property and running with the same in violation of the contract, being the mortgage executed in 1881, and in the accomplishment, as claimed, of a preference created by such statute, to be prior in law though junior in time, to the obligations of the contracts secured by the mortgage and bonds of the International & Great Northern Railroad Company, whereby, as so applied, the statute is unconstitutional and void.

(c) And also, this said statute of 1889 and as carried into the Revised Statutes of Texas of 1911, is unconstitutional and void and in violation of sub-section 1 of Section 10 of Art. 1 of the Constitution of the United States of America; in that, by such sub-section every ex post facto law of the State is prohibited; and in that, by said statute of the State of Texas for a violation thereof, forfeiture of charter and a penalty of \$5000 per day, is denounced to be recovered by the State; whereby under the construction of plaintiff's ex post fact, there has been given a penalty to be made prior in law, though junior in fact, to the mortgage under which this defendant holds, so that such immense penalties shall be collected as contended by plaintiffs out of the properties of this defendant, whereby such act, so violating the Constitution of the United States, is unconstitutional and void.



(d) Furthermore, said statute of the State of Texas as construed and attempted to be enforced by the plaintiffs, is unconstitutional and void and violative of Section 1 of Art. 14 of the Amendments to the Constitution of the United States of America, commonly called the 14th Amendment; in that, as plaintiffs construe and attempt to enforce said statute by the denunciation of the penalties stated above and the insistence that the statute and its penalties are applicable to the defendant, an attempt is made to abridge the privileges and immunities of the defendant and to deprive it of its property without due process of law, and to deny to it the equal protection of the laws by penalizing or threatening to penalize it, should it resort to the courts to resist this action, and to litigate its rights in the premises; whereby, such act is unconstitutional and void by reason of the immensity of the penalties and the attempt thereby to shut the doors of the courts to the defendant in its attempt to test the legality of the claims of the plaintiffs and the constitutionality of said statute.

(e) Furthermore, the said statute of the State of Texas as construed by plaintiffs and sought to be applied by them is unconstitutional and void and violative of Section 1 of Article 14 of the Amendments to the Constitution of the United States; in that, under its terms and burdens, it is an undue interference with the business and the obligations of the defendant, which it owes to the public, both in State and interstate commerce, whereby by meddling and dictating to the defendant it attempts to interfere with the discretion and power of the defendant, although a public carrier, to conduct its business within its own discretion, in obedience to constitutional laws of the State and of the United States; in that it denounces the forfeiture provided above and attempts by subsequent statute to place burdens and liens, as claimed by the plaintiffs; and in that it prescribes where a great number of persons in the service of the defendant must conduct their business and their offices and reside; there-

by denying to this defendant the equal protection of the laws and depriving it of its property, without due process of law; by such illegal interference with its just and legal discretion to carry on its duties to the public and to perform its obligations to its stockholders and to other persons.

(f) Said act of 1889 of the Legislature of Texas, as originally enacted, and as contained in the Revised Statutes of the State and construed by the plaintiffs, is unconstitutional and void and violative of Section 1 of Art. 14 of the Amendments of the Constitution of the United States of America, in that such act is applicable only to chartered railroad companies and is not applicable to individuals, associations, receivers or other persons operating railroad carriers in the State of Texas or to other persons or corporations other than railroads, whatsoever. Whereby, such act constitutes legislation against a species or class not classifiable on any ground, or reason, or law, and places upon such species or class a burden not placed upon other persons in the same course or line of business or upon other corporations and associations doing business in the State of Texas; thereby violating the inhibition of said Section 1 against the passage of laws denying to any persons within the jurisdiction of the State "the equal protection of the laws" and abridging the privileges and immunities of the defendant and depriving it of its property without due process of law.

(g) The defendant invokes the protection of the Constitution of the United States and presents the foregoing defenses under that Constitution in opposition to any recovery by the plaintiffs herein and to the maintenance of their action in any respect.

36. And furthermore, upon all of the allegations in this Section IX made, invoking the Constitution and the laws of the State of Texas and the common law and equity, the International & Great Northern Railway Company says that the plaintiffs should not recover herein or have any relief awarded to them on their construction

of the act of 1889, as originally enacted and as carried into the Revised Statutes of 1911:

(a) Because the same asserts a penalty and a fine of amount prohibited by the Constitution of the State of Texas.

(b) Because the statute as construed and applied by the plaintiffs is retroactive.

(c) Because the plaintiffs seek to recover in violation of the obligations of the contracts which they plead by adding to and burdening the same, and in violation of the mortgage of 1881.

(d) Because such statute is *ex post facto* and denounces penalties asserted to be a burden upon the defendant, the successor to the purchaser.

(e) Because the statute denies to the defendant the equal protection of the law and is violative of the due process of law.

37. And in addition to all of the other reasons and grounds presented above, the International & Great Northern Railway Company pleads all of the matters in this Section IX. set out, and says that it is ready, able and willing to verify the same and pleads the same in every respect in bar of plaintiffs' action, if any they have.

38. And also, not waiving any of the above, but insisting upon all of the same, the defendant represents that, the plaintiffs cannot prevail in this case because, by the proceedings of the United States courts and foreclosures, and sales therein held in the year 1879 as stated above, and the conveyance by Kennedy and Sloan to International & Great Northern Railroad Company, every right and claim whatsoever, if any there was, which the plaintiffs or their predecessors may have had in or on the contracts they sued on, were eliminated, it being now alleged in connection with the above that the International & Great Northern Railroad Company had no notice of the same, but also that if said rights existed, they were purely personal; and

Furthermore, in this connection, the defendant re-

alleges all of the above and represents that the plaintiffs are relying upon the Act of the Legislature of the State of Texas of 1889, carried into Articles 6423, 6424 and 6425 of the Revised Statutes of Texas, and represents that as relied on and replied to by the plaintiffs in this case, such act is unconstitutional and void and violative of subsection 1 of Section 10 of Art. 1 of the Constitution of the United States of America, prohibiting any State from passing a law impairing the obligation of contracts, in that the attempt to enforce the Act of 1889 above mentioned against this defendant as giving a lien and fixing a burden and service upon the properties and adding to the obligations, if any, of the alleged contracts, and attempting to attach and add to these alleged contract conditions as set out in the Statute, is null and void and violates these obligations, because such properties had been passed free and clear; and because the sales, foreclosures and transactions set out above, made in 1879, through the United States Court, eliminated any obligation of the International & Great Northern Railroad Company, either personal of that corporation or as in, out or on its charter franchises, or other properties, as to such contracts, if they existed, and because an attempt to revive the same is contrary to the Constitution of the United States of America and the section stated; and

Furthermore, the defendant states Section 1 of Article 14 of the Amendments to the Constitution of the United States of America, in that the plaintiffs are attempting under the Act of 1889, and by the mere force of said Act as construed by them, to revive obligations which had ceased under the law of the land to be obligations binding on the International & Great Northern Railroad Company, or any of its properties, in that the Statute so construed and applied is unconstitutional and void and in conflict with said Section 1 of Article 14 of the Amendments, whereby the plaintiff by the attempted revival of such dead contracts and the burdens attempted to be placed under them, is deprived of its property without

due process of law, and denied the equal protection of the laws.

39. The defendant invokes the provision of the charter of the Houston & Great Northern Railroad Company, and the other charters set out above, or plead, whereby the domicile of that road and of the International & Great Northern Railroad was at Houston, Texas; and represents that the Act of 1889 and as now in the Revised Statutes of Texas, if applicable, requires the domicile and offices to be in Houston, Texas; and defendant says that the charter of the Houston and Great Northern Railroad Company named Houston, Texas, as the place for the locating of the General Offices; and that the International and Great Northern Railroad Company was a Railroad whose charter named Houston, Texas, as the place for the locating of its General Offices, and named no other place.

#### X.

Further specially pleading, subject to its various positions taken above and insisting upon and preserving each of them, the International & Great Northern Railway Company represents as follows:

1. It repeats and re-avers all of the allegations contained in the last two special pleas above, and makes the same a part of this special plea.

2. The Act of 1889 referred to above, commonly known as the office-shops act, and as now embodied in the Revised Statutes of the State of Texas of 1911, in Sections 6423, 6424 and 6425, has been construed by the ultimate court of the State of Texas, being the Supreme Court of the State, and construed in accordance with the contentions of the defendant herein, under which construction by the Supreme Court of Texas its charter, set out above, was taken out in August, 1911, as above alleged, and in that charter it was provided in the third section thereof that "the place at which shall be established and maintained the principal business office, the public office and

general offices of this corporation, is the City of Houston, in Harris County, State of Texas."

3. This charter was dated the 8th of August, 1911.

4. Section 2 of the Charter is as follows:

"SECOND: This corporation is organized for the purpose of acquiring, owning, maintaining and operating the railroads heretofore forming the International and Great Northern Railroad and purchased by Frank C. Nicodemus, Jr., one of the undersigned, at a sale thereof, held on June 13, 1911, pursuant to a decree of foreclosure and sale entered on or about May 10, 1910, in certain judicial proceedings brought for the foreclosure of a mortgage of the International and Great Northern Railroad Company known as its Second Mortgage, said decree having been made and entered by the United States Circuit Court for the Northern District of Texas, in a certain cause therein pending, wherein The Farmers' Loan and Trust Company, Trustee, was complainant and International and Great Northern Railroad Company and others were defendants, which said decree was subsequently adopted and entered, in certain ancillary causes between the same parties, by the Circuit Court of the United States for the Southern District of Texas, the Eastern District of Texas and the Western District of Texas; said railroads being described as follows, to-wit:

All and singular the lines of railroad in the State of Texas formerly belonging to the International and Great Northern Railroad Company, extending from the town of Longview, in the County of Gregg in said State, through said County and through the Counties of Rusk, Smith, Cherokee, Anderson, Leon, Robertson, Milam, Williamson, Travis, Hays, Comal, Bexar, Medina, Frio, La Salle, Encinal, and Webb, to Laredo in said last-mentioned County; and from the town of Mineola, in Wood County, to Troupe, in Smith County; and from the City of Palestine, in Anderson County, through the Counties of Houston, Trinity, Walker and Montgomery to Houston, in

Harris County; and from the town of Spring, in Harris County, through the Counties of Montgomery, Waller, Grimes, Brazos, Robertson, Falls, McLennan, Limestone, Hill, Navarro, Ellis and Johnson to the City of Fort Worth, Tarrant County; with branches and branch lines from the town of Overton to the town of Henderson, in Rusk County, from the town of Round Rock to Georgetown, in Williamson County, from the town of Phelps to the town of Huntsville, in Walker County, from the City of Houston, in Harris County, to the town of Columbia, in Brazoria County, from Navasota, in Grimes County, to Madisonville, in Madison County, from Calvert Junction to Calvert, in Robertson County, and from Waco Junction to East Waco, in McLennan County; including also the railway and railway tracks and property appurtenant thereto, and certain tracts of land in and adjacent to the City of Houston, in Harris County, known as the Houston Belt Terminals; a total distance of about eleven hundred and six (1106) miles; and including also the trackage rights formerly belonging to said International and Great Northern Railroad Company from Houston, in Harris County; to Galveston, in Galveston County, Texas, over the railroad of the Galveston, Houston and Henderson Railroad Company of 1882, under an agreement between said railroad companies dated November 19, 1895.

This corporation shall have all of the powers and privileges conferred by the laws of the State of Texas upon chartered railroads, including the power to construct and extend."

5. On August 10th, 1911, this charter having been presented to the Attorney General of the State of Texas, as provided by law, for his consideration, he made thereon the following certificate:

"CERTIFICATE.

This is to certify that the original Articles of Incorporation



poration of International and Great Northern Railway Company were submitted to me on the 10th day of August, 1911, and having carefully examined the same I find them in accordance with the provisions of Chapter I of Title 94 of the Revised Statutes of Texas and any and all amendments thereto, and not in conflict with the laws of the United States or of the State of Texas.

J. P. LIGHTFOOT,  
Attorney General.

Filed in the office of the Secretary of State this 10th day of August, 1911.

C. C. McDONALD,  
Secretary of State."

Having carefully considered the same, and thereupon the charter was duly filed with the Secretary of State, and the new corporation began to operate.

6. The immediate questions herein were decided and involved in the case of Kansas City Mexico & Orient Railway Company of Texas vs. City of Sweetwater, and reported in 131 S. W. 25, and in . . . Tex. Ct. of Civil Appeals Reports p. . . . , and also having been affirmed by the Court of Civil Appeals in the above mentioned report thereof, was reversed and rendered in favor of the Railway Company by the Supreme Court of Texas, as appears by the report of the case in 137 S. W. Rep. 1117 and 104 Texas 329.

7. Under the practice of the Supreme Court of Texas, there was before it the opinion of the Court of Civil Appeals and the charge of the trial judge contained therein, and the record and transcript of the whole case.

8. The decision of the Supreme Court reported in 137 S. W. p. 1117, in 104 Texas page 329, was rendered May 31st, 1911, and which opinion before the adjournment of the court at the end of June, and the judgment entered thereon became the final and absolute judgment of that court before the end of June 1911, whereby that court construed the act of 1889 in the particulars herein set out. and that a contract made with the sold out rail-

road did not bind the franchises and properties of the road or its successors incorporating under the statutes of Texas for the purpose of operating such sold out properties, this decision being necessary to the decision of the case.

9. On September 1st, 1910, the legislature of the State of Texas passed an act, approved by the Governor on that date, and put into immediate effect, carried into the Revised Statutes of Texas as Articles 6624 and 6625 of the Revision of 1911.

10. The charter of the defendant was bought and taken under the burdens of the act of September 1st, 1910, hereinabove plead, which act placed burdens to procure the charter, not theretofore existing, and burdens to operate the property on the property rights not theretofore existing, which burdens so assumed, as required by the statute in writing, by this defendant, were to the amount of not less than \$1,000,000 for the liabilities imposed by such statute, whereby the charter was, in effect, purchased under such statute, and the properties under such statute taken only subject to the burdens therein provided and to the express construction of the Supreme Court of Texas of the act of 1889.

11. Wherefore, upon all of the above, the International & Great Northern Railway Company, respectfully represents:

(a) Having purchased its charter under the onerous conditions of the act of September 1st, 1910, and paid the large sums of money in numerous cash payments in discharge of the obligations therein assumed, and said charter being approved by the authorities of the State of Texas, and locating its domicile and general offices in the City of Houston, Harris County, Texas, and the Supreme Court of Texas, as set out above, having finally determined that the act of 1889 did not impose as a burden on the properties or franchises any obligation to perform such alleged contracts as are asserted in this case, the attempt now to change the decision of the Supreme Court

of Texas is an attempt by retroactive decision, after a contract and charter have been acquired, to change the purport, obligation and intent of the statute into which the construction of the Supreme Court of Texas entered; and is an attempt to violate sub-section 1 of Section 10 of Article 1 of the Constitution of the United States, prohibiting the States from passing any ex post facto law or law impairing the obligation of contracts and also is in violation of, and an attempt to violate Art. 14 of Section 1 of the Amendments of the Constitution of the United States of America, whereby an attempt is made to deprive the defendant of its property without due process of law and to deny to it the equal protection of the laws.

(b) Because the above contract, the charter of this defendant, of August 8th, 1911, having been approved by the officers of the State of Texas and providing for its domicile, headquarters and general offices at the City of Houston, in Harris County, Texas, is now attempted to be violated under the circumstances stated and as a contract in contravention of the provisions of the Constitution of the United States of America, last above stated in sub-section "a".

(c) And for these reasons, stated in Sub-sections "a" and "b" above and in this Section X. of these pleadings, the International & Great Northern Railway Company now invokes the protection of the Constitution of the United States of America on the grounds stated and now pleads and represents that these Federal Questions are raised in this case, which cannot be over-ridden by the plaintiffs, and that because of them the plaintiffs cannot recover herein.

(d) Furthermore, the defendant pleads generally all of the matters in this special plea X. set out, all in defense of this action; whereby, upon all of the above, it says the plaintiffs should not recover.

## XI.

The International & Great Northern Railway Company, insisting upon all of the positions stated above and

waiving none of them, and subject to its Bill of Exception taken, overruling the plea to the venue, and its plea of abandonment, and all of the other defenses, further represents as follows:

1. The town of Palestine is a small interior town of about 10,000 population. It is not a manufacturing city, nor has it any large industrial or clerical population to draw from.

2. The International & Great Northern Railway Company has a main trackage of over 1106 miles and a sketch is attached hereto showing its lines, which are colored red, and their relation to continental and interstate railroads. The map is marked Exhibit "Z."

3. The International & Great Northern Railway Company is intensely engaged in interstate traffic, the hauling of continental freight in and out of the Republic of Mexico and the hauling of freight to the port of Galveston, to be shipped coastwise to other States or abroad to foreign nations, and out of the port of Galveston and in interstate traffic through its rail connections. Its revenues, its very existence and the due performance of its duties efficiently to the general public require that it should be unhampered and be free from the shackles attempted by this suit to be imposed upon it.

4. The City of Houston is a place of over 100,000 people, rapidly growing, with a large mechanical, industrial population, and one of the great centers of railway activities in the State of Texas, and where there is a large supply of trained and expert clerical assistants obtainable, and where the executive officers of the railroad can be in constant contact with transportation, problems and men, and where they can best serve the public and the interest of the defendant. None of these conditions exist at Palestine.

5. It is claimed in the petition that not only must the general offices with all of the employees thereof and others of this great railroad be forever located and kept at Palestine, and there hampered and bound down, but

also that "its machine shops and round houses" must forever be kept at Palestine.

6. The International & Great Northern Railway Company now alleges that if the purposes of the present suit prevail, it will be forever hampered and the properties owned by it forever hampered and restricted in their proper uses by the attempt to bind them down at Palestine for the promotion of the purposes of landlords and merchants at that place, and in restriction of its ability to perform its duties to the public and of the ability of the properties to perform such duties forever.

7. Wherefore, upon all of the matters in the Section XI set out, the defendant represents:

(a) The purposes of this suit are in violation of the act of Congress to regulate commerce and the statutes of the United States, and if they prevail will forever hamper and restrict the ability of this defendant and its successors in property to perform their duties in interstate and foreign commerce and will forever and necessarily burden and encumber interstate and foreign commerce, and violate subdivision 3 of Section 8 of Article 1 of the Constitution of the United States and the power of Congress to regulate interstate commerce, and will continue a violation of the same; whereby a Federal question is raised in this case, now expressly opposed to the right of the plaintiffs to recover herein;

(b) Specific performance can not be given in this case without violation of the duties of a public carrier and the duty to the public, and not admitting that the alleged contracts exist, it is now alleged that the enforcement thereof will violate public policy and the ability of the defendant to perform its duties in interstate and other commerce and its duties to the general public. Wherefore, on account of its obligations in interstate and other commerce, it now represents that a Federal question is raised and opposes this defense to any recovery herein, and also under the law and with regard to its duties in intrastate,

as well as in other commerce, represents that plaintiffs should not recover herein.

(c) The defendant opposes the matters set forth in this Section XI to any recovery by plaintiffs upon all grounds.

#### SECTION XI-A.

1. The defendant re-avers and adopts all of the allegations stated in sections VII and IX above.

2. The defendant does not admit that the alleged contracts insisted upon by the plaintiffs ever existed but denies the same, and now pleading as to the claim or right of Anderson County to recover herein, pleads as follows:

3. On November 14, 1874, the County of Anderson sued the Houston & Great Northern Railroad Company by suit filed in Anderson County on or about that date and by that suit the County of Anderson, one of the plaintiffs here, undertook to invalidate and set aside as illegal and fraudulent issuance and as based upon an illegal election, the bond issue issued by Anderson County for One Hundred and Fifty Thousand Dollars in promotion of the construction of the Houston & Great Northern Railroad Company into Anderson County and referred to, though not fully set out, in the plaintiffs' First Amended Petition; with this petition Anderson County exhibited the proceedings of the Commissioners' Court and the history of the election, authorizing such bonds, and in the petition contended that the Houston & Great Northern Railroad Company and its employees and officers had fraudulently procured such election by fraudulent representations or fraudulently representing to the voters of said Anderson County that if the bond issue was carried by the voters at the election to be held in May, 1872, then that the Railroad Company would not only build its road into Palestine to a junction with the International Road and put up a depot within a half mile of the Court House of Anderson County, in Palestine, but that it would accept another proposition voted on at the said election to give Fifty Thousand Dollars to any

railroad to build to the north line of Anderson County; such proposition of Fifty Thousand Dollars being in addition to the other proposition, whereby it was alleged that the voters of Anderson County were falsely and fraudulently induced and defrauded into voting the bond issue of One Hundred and Fifty Thousand Dollars which had been received by the Railroad Company and whereby the Railroad had received such One Hundred and Fifty Thousand Dollar bond issue; and had not complied with the election and other promises made to build to the north side of the county; and in said petition and the amendments thereto, it was contended that the election and issuance of the bonds were fraudulent on the ground that unqualified persons had voted, and other grounds therein set up, all of which completely appear by such petition exhibited herewith, and the amendments thereto under the then practice, all of which were to be taken together, a copy of which is attached hereto, marked Exhibit ZA.

4. To the above petition and the amendments thereto, exhibited above, made a part of this pleading, the Houston & Great Northern demurred, by the demurrer raising the issue that nothing appeared which would give a ground of recovery, which demurrer was fundamental to the contention of the plaintiff; and further the Houston and Great Northern Railroad Company answered specifically and amended its answer from time to time, which demurrers and amended answer are made a part of this pleading and attached hereto, and marked Exhibit ZB, and which demurrers contained the point and was to the point that no ground of recovery was contained in such petition of the plaintiff.

5. Upon these demurrers and pleadings a hearing was had in the District Court of Anderson County, Texas, and the demurrers were sustained, as appears by the judgment of that court hereto attached and marked exhibit ZC and made a part hereof.

6. Upon the sustaining of those demurrers Anderson County amended, as appears by said amendment hereto



attached and marked exhibit ZD and made a part hereof, insisting upon all of its other pleadings, with the addition of this exhibit, and the demurrers being re-presented again were by the District Court of Anderson County sustained and Anderson County declined to amend. A judgment was entered, being a final judgment, against Anderson County in said case, a copy of which said judgment is attached hereto, marked exhibit ZE.

7. Thereafter Anderson County appealed the above case or took out a writ of error to the Supreme Court of Texas, where the judgment of the District Court was affirmed, as appears by the judgment of the Supreme Court of Texas hereto attached and marked exhibit ZF.

8. Wherefore, pleading as to Anderson County and answering its claim to recover anything herein or to prevail herein, the defendant represents that by the above proceedings Anderson County has been estopped to add to or change the contract between Anderson County and the Houston & Great Northern Railroad Company in reference to such bond issue, or to change or add to any of the conditions thereof or to again litigate the contract on which the bond issue was made. Wherefore, this defendant pleads all of the above matters in adjudication of the contract of the company herein.

## XII.

1. The defendant re-avers and adopts all of the allegations stated in Sections VIII and IX above.

2. The defendant does not admit that the alleged contracts insisted upon by the plaintiffs ever existed, but denies the same, and does not waive any of its positions taken above, but insists upon all of the same; but subject to the same, makes this further defense:

3. Plaintiff asserts that under the Act of 1889, carried into the present Revised Statutes, and referred to above, commonly known as the offices-shops act, they have a burden or claim or lien upon the property or properties

of the defendant to secure the performance of the alleged contracts asserted by them.

4. The plaintiffs were not parties to the foreclosure proceedings in the United States courts as set out above, but, as appears above, they were invited to become parties, or to assert their claims along with all other persons.

5. By reason of the foreclosures set out above, the title to all of the properties has passed to this defendant, being acquired on consideration of the great sums of money, or their equivalent, paid by this defendant.

5. By reason of the proceedings set out above, this defendant not only has acquired title to the property, but also is the assignee of all the rights of the second mortgage, which has been described and which was foreclosed.

7. The value of the right or rights, if they exist, claimed by the plaintiffs, if they are tantamount to the lien or burden upon the property or any of the properties of the defendant, is far below and short of the amount of such foreclosures, second mortgage and the decree therefor and interest thereon, and the amount of the obligations assumed by this defendant upon the purchase of the property, and is far below either of these amounts.

8. Wherefore, upon the above the defendant respectfully represents that the equity or right, if any the plaintiffs have (the defendant does not admit that they have any), is of value so small in relation to the amounts which the plaintiffs would have to pay, that it would not avail them to go through any process in the exercise of any right of redemption, if any they have; and furthermore, they are estopped through their failure to come into the foreclosure proceedings to assert any such right through such foreclosure proceedings.

Wherefore, the defendant says it is apparent that the plaintiffs could only recover, if they could recover at all, through the assertion of an equity or redemption as omitted parties to the foreclosure proceedings and that, if they did assert such equity, it would be of no avail because

burdened and conditioned by the payment of such immense sums of money for its successful assertion, which the plaintiffs do not offer to pay and which they can not pay.

Wherefore the defendant prays that such equity of redemption, if any there be, of the plaintiffs, be forever barred and be adjudged to be of no value. It pleads the above also in bar of any recovery by plaintiffs.

### XIII.

Further specially pleading, if further special pleading be necessary, and maintaining all of its positions taken above and insisting upon each and every one of them, and not admitting that the plaintiffs have any right of recovery herein, but denying the same; not admitting that alleged contracts have existed, but denying the same; the defendant re-avers all of the allegations contained in Section VIII above and in Section XI above, and thereon represents as follows:

1. If the plaintiffs have any right by their omission from the foreclosure proceedings set out above, and if they have any property right or title whatsoever on or in any of the property of this defendant, tangible or intangible, which can be asserted and is not barred upon the considerations and defenses set up above, then this defendant represents that it is the assignee of the second mortgage and of the decree asserting and settling the same entered by the United States Circuit Court for the Northern District of Texas, all as set out above, and of the liens, rights and obligations therein created, and it prays as against the plaintiffs that if the plaintiffs should be thought to have any right whatsoever not eliminated on the defenses and considerations stated above; that is, the plaintiffs have foreclosure of said mortgage and such decree and enforcement thereof in all parts as against these plaintiffs, and all of their rights, and that this court do now adjudge in such contingency all of the rights and interests whatsoever of the

plaintiffs to be sold and foreclosed by directing said property and rights of the plaintiffs and any other properties to be sold for the purpose of making the amount under the second mortgage and said decree, and interest thereon, and the cost of this proceeding, unless the plaintiffs shall pay the same to the defendant; and in the event that any equity or right of the plaintiffs, if right they have, be not barred by the court or held for naught upon the considerations asserted above.

## XIV.

Wherefore upon all of the above, and each and every one of its positions taken in this answer, the International & Great Northern Railway Company prays that the plaintiffs take nothing, and that it have all such relief, whether prayed for specially above or not, legal or equitable, general or special, which may be its due.

F. A. WILLIAMS,  
N. A. STEDMAN,  
ANDREWS, BALL & STREETMAN,  
MORRIS & SIMS,  
NORMAN, SHOOK & GIBSON,  
W. E. DONLEY,  
F. B. GUINN,  
WILSON, DABNEY & KING.

*Attorneys for Defendant.*

## EXHIBIT A.

IN THE UNITED STATES CIRCUIT COURT FOR  
THE NORTHERN DISTRICT OF TEXAS.

The Mercantile Trust Company, Trustee,  
Complainant,

vs.

The International and Great Northern  
Railroad Company, Defendant.

*To the Honorable the Judges of the Circuit Court of the  
United States for the Northern District of Texas, in the  
Fifth Circuit, Sitting in Equity:*

The Mercantile Trust Company, a corporation organ-

ized and existing under the laws of the State of New York, and a resident of the said State of New York, brings this its bill of complaint against the International and Great Northern Railroad Company, a corporation organized and existing under the laws of the State of Texas and a resident of the said State of Texas.

And thereupon, humbly complaining, your orator, The Mercantile Trust Company, shows unto your Honors as follows:

FIRST: That your orator, The Mercantile Trust Company, is a corporation organized and existing under the laws of the State of New York, and is a citizen and resident of said State of New York.

That the defendant, the International and Great Northern Railroad Company, is a corporation organized and existing under the laws of the State of Texas, and is a citizen and resident of said State of Texas.

SECOND: That the said defendant, the International and Great Northern Railroad Company, owns and operates a line of railroad, the main lines whereof, as now constructed, owned and operated by the said defendant Company, extend from the Town of Longview, in the County of Gregg, through said county and the counties of Rusk, Smith, Cherokee, Anderson, Leon, Robertson, Milam, Williamson, Travis, Hays, Comal, Bexar, Medina, Frio, La Salle, Encinal and Webb, to Laredo, in said last mentioned county; and from the town of Mineola, in Wood County, to Troup, in Smith County, and from the City of Palestine, in Anderson County, through the counties of Houston, Trinity, Walker, and Montgomery, to Houston, in Harris County, and from the town of Spring, in Harris County, through the counties of Montgomery, Waller, Grimes, Brazos, Robertson, Falls, McLennan, Limestone, Hill, Navarro, Ellis and Johnson, to the City of Fort Worth, in Tarrant County, with branches and branch lines from the town of Overton to the town of Henderson, in Rusk County; from the town of Round Rock to Georgetown, in Williamson County; from the

town of Phelps to the town of Huntsville, in Walker County, and from the City of Houston, in Harris County, to the town of Columbia, in Brazoria County; from Navasota to Madisonville; from Calvert Junction to Calvert, from Waco Junction to East Waco; also the railway and railway tracks and property appurtenant thereto, and certain tracts of land in and adjacent to the City of Houston, in Harris County, known as the Houston Belt Terminals; a total distance of about 1106 miles of completed railroad, all in the State of Texas; owned by the said defendant, the International and Great Northern Railroad Company; all of which lines of railroad and branches, with the exception of the line from the town of Spring, in Harris County, to the City of Fort Worth, in Tarrant County, a distance of 271.8 miles; and said branch lines of railroad from Navasota to Madisonville, a distance of 44.7 miles; from Calvert Junction to Calvert, a distance of 5.3 miles; from Waco Junction to East Waco, a distance of 1.7 miles; also the Houston Belt Terminals, 10.2 miles above mentioned, were so owned and operated by the said defendant Company on and prior to March 1, 1892, the latter named lines, branches and terminals having since been constructed; and are now owned and operated by said defendant company, and all of said lines, branches and terminals above described are, by the terms and provisions of the said defendant company's mortgage, dated March 1, 1892, to your orator, as trustee, hereinafter more fully referred to and set forth, embraced in and covered by the lien of said mortgage; and that all of the corporeal premises aforesaid are situate and lie in the State of Texas, and a large and important part of the railroad and property included in said premises are situated and lie in that part of said State defined and delineated by Federal Law as the Northern District of Texas.

**THIRD:** Your orator further shows that prior to the execution and delivery to your orator of the indenture of mortgage, dated March 1, 1892, hereinafter referred to, the defendant did make, execute and deliver to various

persons its First Mortgage Six per cent bonds to the aggregate amount of \$7,954,000, each dated on the first day of November, 1879, and maturing on the first day of November, 1919, and secured the same by mortgage or deed of trust bearing date on said first day of November, 1879, executed and delivered by it to John S. Kennedy and Samuel Sloan, of the City of New York, trustees; and did make, execute and deliver to various persons its Second Mortgage Six per cent bonds to the aggregate amount of \$7,054,000, each bearing date the fifteenth day of June, 1881, and maturing on the first day of September, 1909, and secured the same by mortgage or deed of trust, and bearing date on the said fifteenth day of June, 1881, executed and delivered by it to The Farmers Loan and Trust Company, of the City of New York, trustee: and that all of said First and Second Mortgage Bonds were and had been for many years prior to said first day of March, 1892, outstanding; and that the defendant Company had defaulted in the payment of the interest due on May 1, 1889, and in the payment of all interest due thereafter down to and including the interest due on November 1, 1891, upon said First Mortgage Bonds; and had likewise so defaulted in the payment of the interest due on March 1, 1889, and in the payment of all interest due thereafter down to and including the interest due on September 1, 1891, upon its Second Mortgage Bonds; and suits to foreclose said First and Second Mortgages had been instituted by the trustees of said mortgages in the Circuit Court of the United States for the Eastern District of Texas.

That on said first day of March, 1892, the defendant company was indebted to the amount of \$546,902.12, upon a certain judgment recovered on the eleventh day of March, 1889, in an action instituted by Jay Gould against the defendant company in the District Court of Smith County, Texas.

That prior to said March 1, 1892, a plan and agreement for the reorganization of the hereinabove recited accrued



indebtedness of the defendant company, which plan bore date of the twenty-seventh day of January, 1892, was approved and entered into by and between the defendant and the holders of its outstanding and unpaid coupons, of its stock and of said judgment, wherein and whereby it was among other things, provided:

1st. That one-half of the amount due upon all said defaulted First Mortgage coupons should be paid in cash, and for the remaining one-half of the amounts so due said company should execute its Certificate of Indebtedness, bearing interest from November 1st, 1891, at the rate of five per cent. per annum, the principal thereof payable in six successive yearly installments, beginning on the first day of November, 1892; the payment of the principal and interest of said certificate to be secured by a deposit of said coupons with the Central Trust Company, of New York, as Trustee.

2nd. That the defaulted Second Mortgage coupons of the party of the first part (less the amount paid upon the coupon of September 1st, 1891, in cash), aggregating the sum of \$1,190,362.50, should be payable at their face in new Third Mortgage Bonds of the said Company.

3rd. That the amount due upon said judgment of March 11th, 1889, should be paid dollar for dollar in said new Third Mortgage Bonds.

4th. That stockholders of the said Company should advance to it the amount of money necessary to meet the cash requirements of said Plan and Agreement for Reorganization, to-wit: the sum of \$1,026,863.23, and should receive for such advancement the amount thereof in said new Third Mortgage Bonds at par.

FOURTH: That in pursuance of the Plan and Agreement referred to in the last foregoing paragraph hereof, the stockholders of said defendant company advanced to it the sum of \$1,026,863.23 for the purpose of enabling it to meet the said cash requirements of said plan and agreement, and said defendant made, executed and delivered its certificate of indebtedness as in said plan and

agreement contemplated, covering one-half of the amounts then due on said defaulted First Mortgage coupons and secured the same by a deposit of said coupons as in said plan and agreement provided, and paid in cash, to and for account of the holders of said coupons, the remaining one-half of the amount so due with interest, to-wit, the sum of \$768,667.09, and paid in cash upon the interest installment of September 1, 1891, on its said Second Mortgage bonds the sum of \$79,357.50, and paid in cash all further cash requirements of its indebtedness, as in said plan and agreement provided.

FIFTH: That, for the purpose of providing for the unpaid coupons upon its Second Mortgage Bonds and its indebtedness upon said judgment of March 11, 1889, and its indebtedness for the amount contributed and advanced by the stockholders (all of which requirements aggregated the sum or amount of \$2,764,127.85) and for other corporate uses, the defendant company, pursuant to due and lawful authority and to due corporate action of its board of directors and stockholders, authorized the making, execution and issue of its bonds (being the Third Mortgage bonds provided to be issued in said plan and agreement hereinabove referred to) of the denominations of \$500 and \$1,000 respectively, to the aggregate amount of \$3,000,000, to be dated on the first day of March, 1892, and maturing on the first day of September, 1921, and bearing interest at the rate of four per cent. per annum, payable to and until September 1, 1897, only out of net earnings of said defendant railroad company; and thereafter absolutely on the first days of March and September in each year; and in order to secure the payment of the principal and interest of said bonds according to the tenor thereof, the defendant company, pursuant to due lawful authority and to due corporate action of its board of directors and stockholders, duly made and executed under its corporate seal and delivered to your orator, as trustee, a mortgage or deed of trust known as its Third Mortgage, a copy whereof is hereto attached marked Exhibit "A,"

and made a part hereof, wherein and whereby the said defendant company granted, bargained, sold, transferred and conveyed to your orator as trustee, or to its successor or successors in the trusts thereof, all and singular, the railroads, lands, tenements, hereditaments, properties, rights and franchises of said defendant company then owned or thereafter to be owned, constructed or acquired by it, further described in said mortgage or deed of trust, as follows: "The line of railroad extending from the Town of Longview in the County of Gregg, through said county and through the counties of Rusk, Smith, Cherokee, Anderson, Leon, Robertson, Milam, Williamson, Travis, Hays, Comal, Bexar, Medina, Frio, La Salle, Encinal and Webb, to Laredo, in said last mentioned county; and from the town of Mineola, in Wood County, to Troupe, in Smith County, and from the City of Palestine, in Anderson County, through the counties of Houston, Trinity, Walker and Montgomery to Houston, in Harris County, with branches and branch lines from the town of Overton to the town of Henderson, in Rusk County; from the town of Round Rock to Georgetown, in Williamson County; from the town of Phelps to the town of Huntsville, in Walker County, and from the City of Houston, in Harris County, to the town of Columbia, in Brazoria County; a total distance of about 775 miles of completed railroad, all in the State of Texas; including all its tracks, right of way, main lines, branches, superstructures, depots, depot grounds, station houses, engine houses, car houses, freight houses, wood houses, sheds, watering places, workshops, machine shops, bridges, viaducts, culverts, fences and fixtures, together with all its leases, leasehold interests, leased or hired lands, leased or hired railroads, and all its locomotives, tenders, cars, carriages, coaches, trucks, and other rolling-stock, its machinery, tools, weighing scales, turn-tables, rails, wood, coal, oil, fuel, equipment, furniture, and materials of every name, nature and description, together with all the corporate rights, privileges, immunities and franchises of said Rail-

road Company, now held or hereafter to be acquired (including the franchise to be a corporation), and all the tolls, fares, freights, rents, income, issues and profits thereof, and all the reversion and reversions, remainder and remainders thereof," all of which above described premises, property, rights, franchises and appurtenances were in and by said mortgage or deed of trust granted, bargained, sold, transferred and conveyed to your orator and to its successor or successors, to have and to hold the same unto your orator and its successor or successors forever, to the only proper use, benefit and behoof of your orator, its successor or successors, in trust for the equal pro-rata benefit and security of all and every the persons or corporations which might be or become holders of any of the bonds issued under said mortgage or deed of trust, without any preference or priority of one bond over another by reason of priority in time of issue or negotiation thereof, or otherwise, and for the uses and purposes and upon the trusts and conditions in said mortgage or deed of trust declared and expressed.

SIXTH: Your orator further shows that your orator accepted said mortgage or deed of trust of March 1, 1892, and has continuously been and now is the trustee under said mortgage.

SEVENTH: Your orator further shows that at or about the time of the execution and delivery of said mortgage, and at various dates thereafter, the defendant Railroad Company, being thereunto duly authorized by law and corporate action, did duly make, execute and issue under its corporate seal, and did deliver to various persons, firms and corporations, for value and for the considerations and purposes and as and in the denominations and form in said mortgage provided, its bonds to the aggregate amount of \$2,960,500, all of which said bonds were duly certified by your orator as trustee as in said mortgage provided, all of which said bonds are now outstanding under and secured by said mortgage. Your orator further shows that bond scrip, in amounts less than \$500,

has been, as your orator is informed and believes, duly issued by the defendant company, as and with the rights in said mortgage provided, and that such scrip is now outstanding to the aggregate amount of \$5,552.50.

EIGHTH: Your orator further shows that said mortgage to your orator as trustee among other things provides as follows:

ARTICLE SECOND: Until default shall be made in the payments of principal or interest, or some part of either principal or interest, as herein provided, the said party of the first part shall possess, control, manage, operate, use and enjoy the said railways, rolling stock, equipments, franchises, real estate, and other property, and shall receive, take and use the rents, incomes, profits and tolls thereof for its own uses and purposes, as if this Indenture had not been made.

*But in case default shall be made in the payment of the principal or of any interest on any of the aforesaid bonds, issued under and secured by this instrument according to the tenor thereof, or of any of the coupons thereto attached, and if such default shall continue for the period of six months after demand made for the payment of the same at the financial agency of the said party of the first part, aforesaid, in the City of New York, it shall be lawful, subject to waiver of such default as hereinafter provided, for the said Trustee, the said party of the second part, or its successor or successors in this trust, by itself, its attorneys, or agents, to enter in and upon, and take possession of, all and singular, the railways, premises and property, rights and interests, hereby conveyed and mortgaged, or intended so to be, and each and every part thereof, and to exclude the said party of the first part and its agents wholly therefrom, and to hold and use the same, and to control, manage and operate, by its superintendents, managers, receivers, agents, servants, employees and attorneys, the said railways, and to manage and conduct the business thereof, and to make, from time to time, at the expense of the trust estate, all repairs and replace-*

ments, and such useful alterations, additions and improvements thereto, as well in respect to the rolling stock and equipments as to the said railways and appurtenances, and all other matters and things which will promote the interests of the parties hereto, as may seem to it, the said Trustee, judicious and proper, and to collect and receive all tolls, freights, incomes, rents, issues and profits of the same and every part thereof, and, after deducting the expenses of operating said railways, and of conducting its business, and paying all proper and legitimate debts and obligations, and for all repairs, replacements, alterations, additions and improvements, as aforesaid, and all taxes, assessments and other proper charges upon the said property and premises, or any part thereof, as well as a just and reasonable compensation for its own services and the services of all agents, clerks, servants and other employees, properly engaged or employed, including reasonable attorneys' and solicitors' fees, then to apply the moneys arising as aforesaid to the payment of the interest in arrear, or which shall become due, on the outstanding bonds secured hereby, in the order in which such interest shall be or become due, ratably to the persons the coupons therefor, and after paying all such interest which shall have become due, to apply the same to the payment of the principal of the aforesaid bonds which may, at that time, be due and unpaid, ratably, without discrimination or preference.

And further, provided that the said party of the first part, at any time hereafter before the full payment of said bonds, whenever it, the said party of the first part, shall deem it proper and expedient for the better security of the said bonds, shall be willing to voluntarily surrender to the said Trustee, the said party of the second part, or its successor or successors in this trust, the possession, control and management of the said railways, premises and property, and the business thereof, for any term of years, certain or indefinite, although there may not have occurred such default as to entitle the said party of the

second part to enter into the possession of the whole or any part of the said railways, rolling stock, premises, property and rights hereby mortgaged, or intended so to be, it shall be the duty of the Trustee, the said party of the second part, or its successor or successors in this trust, upon satisfactory indemnity, upon any such surrender and delivery, to enter into and upon the premises so surrendered and delivered, and to take and receive possession, control and management of said railways and property so surrendered, for such terms or terms of years, certain or indefinite, as may be agreed upon by the said parties hereto, but without prejudice to the rights of said party of the second part, subsequently, to insist upon and maintain such possession, control and management beyond such term whenever it would have been entitled thereto, if such voluntary surrender had not been made. And upon the voluntary surrender and delivery of the said premises or property, or any part thereof, as aforesaid, the said party of the second part, or its successor or successors in this trust, shall, during the time for which such possession and control shall be by it taken, and while the same shall remain in its possession thereunder, receive the income and revenues thereof, and work, use and manage, control, operate and employ the same in such lawful way as may be the most beneficial, as well to the interests of the public as to the holders of said bonds, intended to be secured hereby, and of the party of the first part, and in all respects in accordance with the law and the provisions of this Article.

ARTICLE THIRD: *In case default shall be made in the payment of any interest upon any of said bonds, or of the principal thereof, as aforesaid, and shall continue for six months after demand made for payment, as aforesaid, it shall be lawful, unless such default be waived as herein provided, for the said Trustee, the said party of the second part, or its successor or successors in this trust, after entry as aforesaid, or other entry, or without entry, by its attorney or attorneys, agent or agents, to sell and*



dispose of all and singular the said railways and appurtenances, property and premises, rights, interests and franchises hereby conveyed or mortgaged, or intended so to be, at public auction, to the highest bidder, at such time and place in the City of Palestine, in the State of Texas, as it may designate, having first given public notice of the time, place and terms of such sale by advertisement published not less than once a week for six consecutive weeks in one or more newspapers published in the cities of Palestine, Texas, and New York, with the right to adjourn such sale or sales from time to time, in the discretion of such Trustee, giving reasonable notice of such adjournment, and after so adjourning, to make the sale at the time and place to which the same may be adjourned, and on the consummation of the sale upon the terms and conditions thereof, to make and deliver to the purchaser or purchasers thereof good and sufficient deed or deeds in law for the same in fee simple, which sale, made as aforesaid, shall be a perpetual bar, both at law and in equity, against the said party of the first part and all other persons lawfully claiming, or to claim, the said railways and appurtenances, property and premises, rights, interests and franchises, or any part thereof so sold, by, from, through, or under it. And after deducting from the proceeds of such sale just allowances for all expenses of said sale, including attorneys' and counsel fees, and all other expenses, advances and liabilities which may have been made or incurred by the said Trustee in operating said railways or in maintaining the same, or in managing its business while in possession thereof, and all payments which may have been made by it for taxes and assessments and other proper charges upon the said railways and appurtenances, property and premises, rights, interests and franchises, or any part thereof, as well as reasonable compensation for its own services, then to apply the said proceeds to the payment of the principal of such of the aforesaid bonds as may be at such time unpaid, whether the same shall have previously become due or

not, and of the interest which shall, at that time, have accrued on the said principal and be unpaid, without discrimination or preference, but ratably to the aggregate of said unpaid principal and accrued and unpaid interest added together, and after satisfaction of all the said bonds secured hereby, with the interest thereon, to pay over the surplus of such proceeds, if any, to the said party of the first part, or to such party as may then be entitled to receive the same.

This provision is cumulative to the ordinary remedy by foreclosure in the courts, and the Trustee herein or its successor or successors in this trust, upon default being made as aforesaid, may, at its discretion, and upon the written request of the holders of the majority in value of the said bonds then outstanding and unpaid, shall (upon being properly indemnified) institute proceedings to foreclosure this mortgage or deed of trust, in such manner (by sale under the power herein given, or by suit) as the holders of a majority in value of said bonds may direct, and if no such direction is given in this behalf, then in such manner as the said Trustee may deem most expedient.

For the debt or bonds secured hereby the said Railroad Company, the said party of the first part, is liable in personam, and any deficit after exhausting the mortgaged security may be enforced against the said Company or its other property, but not against the stockholders individually.

NINTH: Your orator further shows that the defendant company has failed to pay and has made default in the payment of the following amounts of interest represented by coupons from the said outstanding Third Mortgage bonds which fell due upon the following dates, respectively, namely:

March 1, 1901, \$32,530; September 1, 1901, \$32,530;  
 March 1, 1902, \$32,530; September 1, 1902, \$32,530;  
 March 1, 1903, \$32,530; September 1, 1903, \$32,530;  
 March 1, 1904, \$37,430; September 1, 1904, \$37,430;

March 1, 1905, \$37,430; September 1, 1905, \$37,430; March 1, 1906, \$37,430; September 1, 1906, \$37,430; March 1, 1907, \$37,430; September 1, 1907, \$37,430. Total, \$494,620; and that said coupons have been duly presented for payment to the defendant company and payment thereof has been refused and the defendant company has been ever since and now is in default in the payment of the interest and coupons due upon its said Third Mortgage bonds in the amounts and at the dates in the foregoing schedule specified, which said interest and coupons in default aggregate the sum of \$494,620; and said defendant railroad company has wholly failed, neglected and refused to pay the same, and still so fails, neglects and refuses.

TENTH: Your orator further shows that the said defendant the International and Great Northern Railroad Company is insolvent and unable to meet its operating expenses and accrued obligations and to defray the cost of improvements and of enlarged and improved facilities required by the constituted authorities of the State of Texas to be made and finished by it; and that it has incurred a large amount of floating and unsecured indebtedness which it is wholly unable to pay and discharge.

ELEVENTH: Your orator further shows that said mortgage of March 1, 1892, specifically pledges to your orator the tolls, fares, freights, rents, income, issues and profits of the premises embraced in said mortgage; and that the income and revenues of the premises described in said mortgage are an essential part of the security of your orator, and your orator is entitled to have such income and revenues forthwith, immediately and continuously appropriated to the payment of the interest upon said bonds secured by said mortgage; and that said mortgage specifically pledges to your orator the franchise to maintain and operate the railway and property in said mortgage described and that your orator is entitled to the possession of the premises embraced in said mortgage, and to maintain and operate said railroad, and to receive

and apply the tolls and revenues thereof, as in said mortgage provided, and to have the said mortgaged premises sold and administered; and, to the end that it may be put in such possession and have a decree enforcing its security, it brings this its bill of complaint.

WHEREFORE, and forasmuch as your orator is remediless in the premises under and by the strict rules of the common law, and can have relief only in a court of equity, where matters of this nature are properly cognizable and reviewable, your orator files this its bill of complaint, and prays, the premises considered:

1. That said mortgage or deed of trust of March 1, 1892, executed and delivered by the defendant to your orator and hereinabove mentioned and described, may be decreed to be a lien upon all the property, real, personal and mixed, rights, franchises, lands, grants, titles, railroads, branches and extensions in said mortgage or deed of trust described, and then owned, and upon all property subsequently owned, acquired or constructed by the defendant company, and the nature, extent and character of said property may be ascertained and determined; and that the defendant, the International and Great Northern Railroad Company, may be decreed to pay unto your orator all moneys now due or to become due and payable under and by virtue of said mortgage or deed or trust so executed to your orator as aforesaid. And that in default thereof the said defendant railroad company and all persons claiming under it may be forever barred and foreclosed of and from all equity of redemption and claim of, in and to said mortgaged premises and every part and parcel thereof, and that all and singular said mortgaged premises with the appurtenances, property and effects, rights, immunities and franchises in said mortgage mentioned and conveyed, or intended so to be, may be sold under a decree of this honorable court, and that out of the money arising from the sale thereof, after deducting from the proceeds of any such sale just allowances for all disbursements and expenses of said sale, including attor-

neys' and counsel's fees, and the reasonable charge of your orator for services rendered as trustee, and for all expenses incurred by it in the premises and all payments which may be made for taxes or assessments or otherwise on the said premises or any part thereof, the said proceeds be applied to the payment of the principal of such of the aforesaid bonds as may be at that time unpaid, whether or not the same shall previously have become due, and of the interest which shall at that time have accrued upon said principal and be unpaid.

And your orator further prays that an account may be taken of the bonds secured by said Third Mortgage of March 1, 1892, to your orator, as trustee, and of the amount due upon such bonds for principal and interest, or either.

2. That a receiver may be appointed according to the usual course and practice of this court, with the usual powers of receivers in like cases, of the railroad, franchises and premises embraced in and covered by said mortgage to your orator as trustee; and that the said receiver be empowered, instructed and directed to take possession of the railway, rolling stock and appurtenances, and of all extensions, branches, property and premises embraced in said mortgage, and to operate the same and to collect and receive the income and tolls thereof and to properly account for the net earnings received therefrom after deducting the expenses of operating the same, and the amount of taxes, assessments and prior charges upon said railroad and property; and that the defendant, the International and Great Northern Railroad Company, be decreed to make such transfers or conveyances to said receiver appointed as herein prayed, and to the purchaser or purchasers at any sale or sales of all or any part of said property, as may be made in conformity with the provisions of said mortgage, or under the decree of this honorable court, which may be necessary and proper to put such purchaser or purchasers, or either of them, in possession of the property so purchased.

3. Your orator further prays that a writ of injunction be issued out of and under the seal of this honorable court by one of your Honors, according to the form of the statute in such case made and provided, directing, commanding, enjoining and restraining the said defendant from interfering with, transferring, selling, or disposing of any of the property mentioned in and covered by said mortgage or deed of trust; and that your orator may have such other or further relief in the premises as the nature and circumstances of this case may require, and to this honorable court shall seem meet.

4. That your Honors may grant unto your orator a writ of subpoena, directed to the International and Great Northern Railroad Company, thereby commanding it at a certain time and under a certain penalty therein to be named personally to be and to appear before this honorable court, then and there to answer to all and singular the matters aforesaid, but not under oath (an answer under oath being expressly waived) and to stand and abide by and perform such order, directions or decree as shall be made herein and as to your Honors shall seem equitable and just.

And your orator as in duty bound will ever pray.

THE MERCANTILE TRUST COMPANY,

By ALEXANDER & GREEN,

COKE, MILLER & COKE,

*Its Solicitors.*

W. W. GREEN,

H. C. COKE,

*Of Counsel.*

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THE STATE OF TEXAS,

County of.....

T. S. Miller, being duly sworn, says that he is one of the solicitors for the complainant in the foregoing bill of complaint; that he knows the contents of said bill, and he verily believes the same to be true, and that he has de-

rived his knowledge and information in respect of the matters and things alleged in said bill from an examination of papers, documents and records relating thereto, and from personal conference with the duly authorized representatives and agents of the complainant herein.

T. S. MILLER.

Sworn to and subscribed before me, this 25th day of February, 1908.

(L. S.)

GABRIEL FERNANDEZ, JR.,  
Notary Public.

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EXHIBIT "A."

INTERNATIONAL AND GREAT NORTHERN RAILROAD COMPANY

—TO—

THE MERCANTILE TRUST COMPANY, TRUSTEE.

*Four Per Cent Gold Third Mortgage.*

Dated March 1, 1892.

THIS INDENTURE, made this first day of March, 1892, between the INTERNATIONAL AND GREAT NORTHERN RAILROAD COMPANY, a corporation, organized and existing under the laws of the State of Texas, party of the first part, and the MERCANTILE TRUST COMPANY, a corporation organized and existing under the laws of the State of New York, Trustee, party of the second part:

WHEREAS, the party of the first part did heretofore make, execute and deliver to various persons its First Mortgage Six Per Cent. to the aggregate amount of \$7,954,000, each dated on the first day of November, 1879, and maturing on the first day of November, 1919, and secured the same by a mortgage or deed of trust bearing date on said first day of November, 1879, executed and delivered by it to John S. Kennedy and Samuel Sloan, of the City of New York, trustees; and the said party of the first part did heretofore make, execute and deliver to va-



rious persons its second mortgage six per cent. bonds to the aggregate amount of \$7,054,000, each bearing date the 15th day of June, 1881, and maturing on the first day of September, 1909, and secured the same by a mortgage or deed of trust, bearing date on said fifteenth day of June, 1881, executed and delivered by it to The Farmers' Loan and Trust Company, of the City of New York, Trustee;

AND WHEREAS, the party of the first part defaulted in the payment of the interest due on May 1st, 1889, and in the payment of all interest due thereafter down to and including the interest due on November 1st, 1891, upon said First Mortgage bonds; and likewise so defaulted in the payment of the interest due on March 1st, 1889, and in the payment of all interest due thereafter down to and including the interest due on September 1st, 1891, upon said Second Mortgage bonds; and suits to foreclose said First and Second Mortgages were instituted by the Trustees of said mortgages in the Circuit Court of the United States for the Eastern District of Texas.

AND WHEREAS, the party of the first part is, at the date hereof, indebted to the full amount of \$546,902.12, upon a certain judgment recovered on the 11th day of March, 1889, in an action instituted by Jay Gould against the party of the first part in the District Court of Smith County, Texas;

AND WHEREAS, a Plan and Agreement for the Reorganization of the hereinbefore recited accrued indebtedness of the party of the first part, bearing date the 27th day of January, 1892, was approved and entered into by and between the Company (party hereto of the first part), and the holders of its outstanding and unpaid coupons, of its stock and of said judgment, wherein and whereby it was, among other things provided:

1st. That one-half of the amount due upon all of said defaulted First Mortgage coupons should be paid in cash, and for the remaining one-half of the amounts so due said Company should execute its Certificates of Indebtedness, bearing interest from November 1st, 1891, at the

rate of five per cent. per annum, the principal thereof payable in six successive yearly installments beginning on the first day of November, 1892; the payment of the principal and interest of said certificate to be secured by a deposit of said coupons with the Central Trust Company of New York, as Trustee.

2d. That the defaulted Second Mortgage coupons of the party of the first part (less the amount paid upon the coupon of September 1st, 1891, in cash), aggregating the sum of \$1,190,362.50, should be payable at their face in new Third Mortgage bonds of the said Company.

3d. That the amount due upon said judgment of March 11th, 1889, should be paid dollar for dollar in said new Third Mortgage bonds.

4th. That stockholders of the said Company should advance to it the amount of money necessary to meet the cash requirements of said Plan and Agreement for Reorganization, to-wit: the sum of \$1,026,863.23, and should receive for such advancement the amount thereof in said new Third Mortgage bonds at par.

AND WHEREAS, in pursuance of said Plan and Agreement for Reorganization, the stockholders of the said Railroad Company have advanced to it the said sum of \$1,026,863.23 for the purpose of enabling it to meet the said cash requirements of said Plan and Agreement, and said Company has made, executed and delivered its said Certificate of Indebtedness, covering one-half of the amounts due upon its said defaulted First Mortgage coupons and has secured the same by a deposit of said coupons as in said Plan and Agreement provided; and has paid in cash to and for account of the holders of said coupons the remaining one-half of the amounts so due, with interest, to-wit, the sum of \$768,667.09, and has paid in cash upon the interest installment of September 1st, 1891, on its said Second Mortgage bonds, the sum of \$79,357.50; and has paid in cash the cost and expense of said Reor-

ganization, including compensation to the Trustees of said mortgages, the charges of Bondholders' Committees, the fees of counsel for said Committees and for complainants, in said foreclosure suits, &c, to-wit, the sum of \$178,838.64;

AND WHEREAS, for the purpose of providing for the unpaid coupons upon its Second Mortgage bonds, and its indebtedness upon said judgment of March 11, 1889, and its indebtedness for the amount of said contribution and advancement of stockholders (all of which requirements aggregate the sum or amount of \$2,764,127.85) and for other corporate uses, the party of the first part has, by due corporate action of its Board of Directors, determined to make, execute and issue its bonds (being the Third Mortgage bonds provided to be issued in said Plan and Agreement for Reorganization) of the denominations of Five Hundred Dollars and One Thousand Dollars, respectively, to the aggregate amount of Three Million Dollars, dated on the first day of March, 1892, maturing on the first day of September, 1921, and bearing interest at the rate of four per cent. per annum, payable until and including September 1st, 1897, only out of the net earnings of the party of the first part, and thereafter absolutely; and to secure said bonds by the execution and delivery to the Mercantile Trust Company, Trustee, of this Mortgage or Deed of Trust;

AND WHEREAS, the making, execution and delivery of said last-mentioned bonds and of this Mortgage or Deed of Trust has been duly authorized by a resolution adopted by a vote of more than two-thirds of all of the stock of the party of the first part at a meeting of its stockholders duly called and held for that purpose, upon notice of more than sixty days, served and published in accordance with the requirements of law; and, in like pursuance of law, a copy of said resolution has been duly recorded in the office of the Secretary of State of the State of Texas;

AND WHEREAS, each of said bonds is in substantially the following form:

UNITED STATES OF AMERICA.  
THE INTERNATIONAL AND GREAT NORTHERN  
RAILROAD COMPANY.

THIRD MORTGAGE FOUR PER CENT. BOND.

Due September 1st, 1921.

No.....

\$1,000

THE INTERNATIONAL AND GREAT NORTHERN RAILROAD COMPANY, for value received, hereby acknowledges itself indebted to THE MERCANTILE TRUST COMPANY, Trustee, or bearer, in the sum of one thousand dollars which sum the said Railroad Company promises to pay, at its Financial Agency in the City of New York, to the bearer, unless this bond is registered, and, if registered, then to the registered holder hereof, in Gold Coin of the United States of the present standard of weight and fineness, on the first day of September, in the year 1921; together with interest thereon at the rate of four per cent. per annum, from the first day of March, 1892, payable semi-annually in like gold coin on the first days of March and September in each year upon presentation of the annexed coupons as they severally become due at the said agency of the Company in the City of New York. The payment of the interest coupons maturing on the first day of September, 1892, and of all succeeding coupons down to and including the coupons maturing on the first day of September, 1897, is subject to the terms and conditions stated in the deed of trust or mortgage hereinafter mentioned, to the effect that the said coupons shall be payable only out of such net earnings of the said Railroad Company, if any, as shall remain after deducting from the gross earnings acquired during the periods to which such coupons respectively relate, the operating and maintenance expenses, taxes, interest upon prior mortgage and guaranteed bonds, the interest upon and annual installments of principal of this Company's First Mortgage coupon Cer-

tificate of indebtedness, repairs, renewals, replacements, insurance, alterations, additions, betterments and equipments. If such net earnings shall be insufficient to provide for the payment of such interest coupons in full, they shall be applied to the payment of such coupons at such reduced rate as they may suffice to pay, and the amount so paid shall be in full satisfaction of the coupons to which the payment shall be applied. The interest upon this bond during the said period (from the date hereof to and including the first day of September, 1897), to which the said terms and conditions of said mortgage relate, shall not be cumulative, and in case no net earnings for the six months covered by any interest coupon maturing during said period shall remain after the deductions aforesaid, the said coupon and the obligation of the Company therein contained shall cease and become of no effect.

This bond is one of a series of thirty-five hundred bonds of like tenor and date, numbered consecutively from 1 to 3,500, inclusive, of which bonds numbered from 1 to 2,500, inclusive, are of the denomination of \$1,000 each, and bonds numbered from 2,501 to 3,500 inclusive, are of the denomination of \$500 each; all of which are equally secured by a Third Mortgage or Deed of Trust of even date herewith executed and delivered by said Company to The Mercantile Trust Company of New York, Trustee, covering the entire railroad of said Railroad Company, together with all the rolling stock, equipment, appurtenances, privileges and immunities of the said Company now owned or hereafter acquired.

If default shall be made in the payment of any semi-annual installment of interest which shall mature on this bond as herein and in said coupons provided, when the same shall become due and be demanded, and such interest shall remain unpaid for six months after such demand, the principal of this bond shall become due and payable in the manner provided in said mortgage or deed of trust.

This bond shall pass by delivery or by transfer on the

books of said Railroad Company in the City of New York; after registration of ownership certified hereon by the transfer agent of said Company, no further transfer except on the books of the Company shall be valid unless transferred to bearer on said books, after which this bond shall pass by delivery as at first, but shall continue subject to registration and transfer to bearer successively at the option of each holder.

This bond is to be valid only when authenticated by a certificate endorsed hereon, signed by the Trustee, to the effect that it is one of the bonds secured by said mortgage or deed of trust.

IN WITNESS WHEREOF, the said Railroad Company has caused its corporate name to be hereto signed by its President or Vice-President, and its corporate seal to be hereunto affixed, attested by its Assistant Secretary this first day of March, 1892, and the annexed coupons to be executed with the engraved signature of its Assistant Treasurer.

THE INTERNATIONAL AND GREAT NORTHERN  
RAILROAD COMPANY.

By

*President.*

Attest:

*Assistant Secretary.*

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NOW, THEREFORE, THIS INDENTURE WITNESSETH:

That the International and Great Northern Railroad Company, party of the first part, for and in consideration of the premises and of the sum of one dollar to it duly paid by the party of the second part, and in order to secure the payment of the principal and interest of the bonds secured hereby, according to the tenor thereof, but in the manner and subject to the conditions herein provided, has granted, bargained, sold, transferred and conveyed, and does hereby grant, bargain, sell, transfer and convey unto the said The Mercantile Trust Company, par-

ty of the second part, and to its successor or successors in this trust, all and singular the lands, tenements and hereditaments of the said Railroad Company, now owned or hereafter to be acquired by it, and all and singular the railroads and railroad property now owned or to be hereafter constructed or acquired by it, the main line whereof, as now constructed, extends from the Town of Longview, in the County of Gregg, through said county and through the counties of Rusk, Smith, Cherokee, Anderson, Leon, Robertson, Milam, Williamson, Travis, Hays, Comal, Bexar, Medina, Frio, La Salle, Encinal and Webb, to Laredo in said last mentioned county; and from the town of Mineola in Wood County, to Troup, in Smith County, and from the City of Palestine, in Anderson County, through the counties of Houston, Trinity, Walker, and Montgomery to Houston, in Harris County, with branches and branch lines from the town of Overton to the town of Henderson, in Rusk County, from the town of Round Rock to Georgetown, in Williamson County; from the town of Phelps to the town of Huntsville, in Walker County; and from the City of Houston in Harris County, to the town of Columbia, in Brazoria County; a total distance of about 775 miles, of completed railroad, all in the State of Texas; including all its tracks, rights of way, main lines, branches, superstructures, depots, depot grounds, station houses, engine houses, car houses, freight houses, wood-houses, sheds, watering places, workshops, machine shops, bridges, viaducts, culverts, fences and fixtures, together with all its leases, leasehold interests, leased or hired lands, leased or hired railroads, and all its locomotives, tenders, cars, carriages, coaches, trucks, and other rolling-stock, its machinery, tools, weighing scales, turntables, rails, wood, coal, oil, fuel, equipment, furniture, and material of every name, nature and description, together with all the corporate rights, privileges, immunities and franchises of said Railroad Company, now held or hereafter to be acquired (including the franchise to be a corporation), and all the tolls,



fares, freights, rents, income, issues and profits thereof, and all the reversion and reversions, remainder and remainders, thereof, in trust, however, for the uses and purposes hereinafter mentioned.

TO HAVE AND TO HOLD, the above described premises, property, rights, franchises and appurtenances unto the said party of the second part and its successor or successors forever to the only proper use, benefit and behoof of the said party of the second part, its successor or successors; IN TRUST, nevertheless, for the equal *pro rata* benefit and security of all and every the persons or corporations who may be or become holders of any of the bonds issued hereunder, without any preference or priority of one bond over another, by reason of priority in time of issue or negotiation thereof, or otherwise, and for the uses and purposes and upon the trusts and conditions herein declared and expressed.

THIS MORTGAGE IS EXPRESSLY made and declared to be subject to the mortgage of the said Railroad Company, party hereto, of the first part, dated on the first day of November, 1879, covering the railroad and property of the Railroad Company, then owned or thereafter to be acquired, executed to John S. Kennedy and Samuel Sloan, Trustees, to secure the bonds of the Railroad Company issued and to be issued thereunder as therein provided; and subject also to the mortgage of the Railroad Company dated on the 15th day of June, 1881, likewise covering the railroad and property of the Railroad Company then owned or thereafter to be acquired, executed to the Farmers' Loan and Trust Company, Trustee, to secure the bonds of the Railroad Company issued and to be issued thereunder, and as therein provided; and subject to all of the provisions of said last-mentioned mortgages, and to the powers, rights and privileges, as well as the covenants, duties and obligations, of the party of the first part therein, respectively set forth and contained.

The said Railroad Company, party of the first part, hereby covenants and agrees to and with the said Trustee,

party of the second part, for the benefit of the bondholders secured hereby, that it will pay all lawful taxes and assessments upon said property hereby mortgaged at any time legally levied and assessed thereon; that it will suffer no mechanic's, statutory or laborer's liens, which shall have priority to this mortgage, to be created or placed on any part or portion of said railways or any part of the estate and property hereby mortgaged, to the end that the priority of this mortgage shall at all times be maintained; and that it shall and will diligently preserve all the rights and franchises to it granted and upon it conferred, and shall and will at all times maintain, preserve and keep the same and every part thereof, with the rolling stock, fixtures and appurtenances, and every part and parcel thereof, in good repair, working order and condition, and shall and will from time to time make all needful and proper repairs, renewals, replacements and useful and proper alterations, additions, betterments and improvements.

And the said Railroad Company further covenants that it will not issue, negotiate, sell or otherwise dispose of the bonds to be issued hereunder in any manner inconsistent with the provisions of these presents and its covenants and agreements in that behalf herein contained; and for the purpose of securing to the holders of the said bonds to be issued hereunder that none of said bonds shall be issued except as herein provided, it is hereby stipulated and agreed by and between the parties hereto, that the said Trustee herein, or its successor or successors, in said trust, shall (without further corporate action or resolution of the Railroad Company) certify and deliver said bonds only as follows:

1. Bonds secured by this Indenture shall be issued, certified and delivered by the said Trustee in payment, at par, for the hereinbefore recited advancements and contributions of the stockholders of the party of the first part made for the purpose of enabling it to provide for the cash requirements of the said Plan and Agree-

ment for Reorganization, dated on the 27th day of January, 1892. Said advancements and contributions aggregate the sum of \$1,026,863.23, and bonds secured by this Indenture shall, for the purpose specified in this clause, be issued only to that aggregate amount at their face or par, and shall be so issued only in exchange for the receipt or receipts of the said Railroad Company for said advancements or contributions.

2. Bonds secured by this Indenture shall be issued, certified and delivered by the said Trustee, in payment, at their face, for the defaulted Second Mortgage coupons of the said Railroad Company hereinbefore recited (except for the proportion of the coupons of September 1st, 1891), paid in cash as aforesaid), and shall be so delivered in exchange for said coupons dollar for dollar. The said defaulted coupons include the coupons matured March 1st, 1889, and all subsequent coupons down to and embracing the coupons matured September 1st, 1891, and the aggregate amount of said defaulted coupons (less the said proportion of the coupons of September 1st, 1891, paid in cash as aforesaid), is the sum of \$1,190,362.50, and bonds issued under this indenture for the purpose specified in this clause shall only be issued to an aggregate amount at their face, equal to said last mentioned sum. The coupons received by the Trustee in exchange for said bonds shall be delivered to the Railroad Company and cancelled.

3. Bonds secured by this Indenture shall be issued, certified and delivered by the said Trustee in payment, at par, of the amount due upon said hereinbefore recited judgment of March 11th, 1889, recovered in said action brought by Jay Gould against the International and Great Northern Railroad Company in the District Court of Smith County, Texas. The amount so due upon said judgment, at the date hereof, is \$546,902.12, and for the purpose specified in this clause bonds secured hereby shall be issued only to an amount at their face aggregating said last mentioned sum, and shall be so issued and

delivered only upon the delivery to said Trustee of a duly executed satisfaction and release of said judgment, or of duly authenticated evidence that said judgment has been satisfied and discharged.

4. The remaining bonds provided to be issued and certified under this Indenture shall be certified by said Trustee and delivered to the said Railroad Company, and the said Railroad Company, party hereto of the first part, hereby covenants and agrees that it will not issue, use or negotiate the same, except for good and lawful consideration, and for its legitimate corporate uses.

In all cases where any persons under the terms of this Indenture are entitled to receive bonds secured hereby in any amounts less than \$500, such persons shall receive, from the Railroad Company Scrip Certificates for such fractional amounts, which said Certificates shall be convertible at their face into said bonds bearing the then current coupon, and all subsequent coupons, when presented in amounts aggregating \$500 or \$1,000, or multiples thereof.

AND SAID RAILWAY COMPANY HEREBY FURTHER COVENANTS that it will at all times hereafter, as long as any of the bonds to be issued hereunder shall remain outstanding, keep an agency in the City of New York, and that it will pay the principal and interest of the said bonds, at the times and in the manner therein provided. But the covenant to pay the said coupons annexed to said bonds maturing on the first day of September, 1892, and each six months thereafter to and including the coupon maturing on the first day of September, 1897, is subject to the following condition and agreement: The said Company shall state each six months an account of the gross earnings, income, receipts, interests, dividends and profits received from the said mortgaged property. It shall charge against such gross income all operating and maintenance expenses, taxes, repairs, renewals, replacements and insurance, and also such expenditures for useful and proper alterations, additions, betterments and equipment

as shall be authorized or approved by its Directors, and in each statement it shall charge six months' interest upon all of its outstanding prior mortgage bonds and six months' interest on its said Certificate of Indebtedness secured by deposited First Mortgage coupons and also one-half of the annual installment of the principal of said Certificate, and also six months' interest paid by said Company on all bonds which have been guaranteed by it prior to March 1, 1892. Such net earnings as shall remain after the charges above specified shall have been made shall be applied to the payment of said coupons. If such net earnings shall be insufficient to provide for the payment of such interest coupons in full they shall be applied to the payment of such coupons at such reduced rate as they may suffice to pay, and the amount so paid shall be in full satisfaction of the coupons to which the payment shall be applied. The account provided to be kept in this section shall be stated within six months after the maturity of each of said coupons. It shall be stated for the period of six months to which the matured coupon applies. If the account shall show net earnings for such period sufficient to pay such coupons in part only, the application of such earnings to such part payment shall be in full satisfaction of such coupons, which shall be surrendered and cancelled on the receipt of such part payment. The said interest accruing on this bond during the said period from the date hereof to and including the first day of September, 1897, to which the provisions of this clause relate, shall not be cumulative; and in case no net earnings for the six months covered by any interest coupon maturing during said period, after the deductions aforesaid, shall be shown by such account, the coupon for said period and the obligation of the Company therein contained shall cease and become of no effect.

IT IS HEREBY AGREED AND DECLARED, that the aforesaid described property, rights, interests and franchises hereby conveyed or mortgaged are to be held by such Trustee

and its successor or successors upon and for the additional trusts, uses and purposes following, to-wit:

*Article First.* This indenture is upon the express condition, that if the said Railroad Company, the said party of the first part, shall well and truly pay, or cause to be paid, to the holder or holders of said bonds, the principal sums of money therein mentioned, according to the true intent and meaning thereof, with the interest thereon, according to the terms and conditions thereof and of the interest coupons thereto attached, then, and in that case, the lien or incumbrance hereby created for the security and payment thereof, and all estate, right, title and interest of the said party of the second part in the property aforesaid, shall cease and determine, and at the request of the said party of the first part, or its assigns, this Indenture shall be satisfied and discharged, and a release and satisfaction thereof shall be entered of record in each and all of the several counties in which this Indenture shall have been recorded, at the cost of the said party of the first part.

*Article Second.* Until default shall be made in the payment of principal or interest, or some part of either principal or interest, as herein provided, the said party of the first part shall possess, control, manage, operate, use and enjoy the said railways, rolling stock, equipments, franchises, real estate and other property, and shall receive, take and use the rents, incomes, profits and tolls thereof for its own uses and purposes, as if this Indenture had not been made.

BUT IN CASE DEFAULT SHALL BE MADE in the payment of the principal or of any interest on any of the aforesaid bonds, issued under and secured by this instrument according to the tenor thereof, or of any of the coupons thereto attached, and if such default shall continue for the period of six months after demand made for the payment of the same at the financial agency of the said party of the first part, aforesaid, in the City of New York, it shall be lawful, subject to waiver of such default as herein-

after provided, for the said Trustee, the said party of the second part, or its successor or successors in this trust, by itself, its attorneys, or agents, to enter in and upon, and to take possession of all and singular the railways, premises and property, rights and interests, hereby conveyed and mortgaged, or intended so to be, and each and every part thereof, and to exclude the said party of the first part, and its agents wholly therefrom, and to hold and use the same, and to control, manage and operate, by its superintendents, managers, receivers, agents, servants, employees and attorneys, the said railways, and to manage and conduct the business thereof, and to make, from time to time, at the expense of the trust estate, all repairs and replacements, and such useful alterations, additions and improvements thereto, as well in respect to the rolling stock and equipments, as to the said railways and appurtenances, and all other matters and things which will promote the interests of the parties hereto, as may seem to it, the said Trustee, judicious and proper, and to collect and receive all tolls and freights, incomes, rents, issues, and profits on the same and every part thereof, and after deducting the expenses of operating said railways, and of conducting its business, and paying all proper and legitimate debts and obligations, and for all repairs, replacements, alterations, additions and improvements, as aforesaid, and all taxes, assessments and other proper charges upon the said property and premises, or any part thereof, as well as a just and reasonable compensation for its own services and the services of all agents, clerks, servants and other employees, properly engaged or employed, including reasonable attorneys' and solicitors' fees, then to apply the moneys arising as aforesaid to the payment of the interest in arrear or which shall become due, on the outstanding bonds secured hereby, in the order in which such interest shall be or become due, ratably to the persons holding the coupons therefor, and after paying all such interest which shall have become due, to apply the same to the payment of the



principal of the aforesaid bonds which may, at that time, be due and unpaid, ratably, without discrimination or preference.

And further provided that the said party of the first part, at any time hereafter before the full payment of said bonds, whenever it, the said party of the first part, shall deem it proper and expedient for the better security of the said bonds, shall be willing to voluntarily surrender to the said Trustee, the said party of the second part, or its successor or successors in this trust, the possession, control and management of the said railways, premises and property, and the business thereof, for any term of years, certain or indefinite, although there may not have occurred such default as to entitle the said party of the second part to enter into the possession of the whole or any part of the said railways, rolling stock, premises, property and rights hereby mortgaged, or intended so to be, it shall be the duty of the Trustee, the said party of the second part, or its successor or successors in this trust, upon satisfactory indemnity, upon any such surrender and delivery, to enter into and upon the premises so surrendered and delivered, and to take and receive possession, control and management of said railways and property so surrendered, for such term or terms of years, certain or indefinite, as may be agreed upon by the said parties hereto, but without prejudice to the rights of said party of the second part, subsequently to insist upon and maintain such possession, control and management beyond such term whenever it would have been entitled thereto, if such voluntary surrender had not been made. And upon the voluntary surrender and delivery of said premises or property, or any part thereof, as aforesaid, the said party of the second part or its successor or successors in this trust shall, during the time for which such possession and control shall be by it taken, and while the same shall remain its possession thereunder, receive the incomes and revenues thereof, and work, use and manage, control, operate and employ the same in such lawful

way as may be the most beneficial, as well to the interests of the public as to the holders of said bonds, intended to be secured hereby, and of the party of the first part, and in all respects in accordance with the law and the provisions of this Article.

*Article Third.* IN CASE DEFAULT SHALL BE MADE in the payment of any interest upon any of said bonds, or of the principal thereof, as aforesaid, and shall continue for six months after demand made for payment, as aforesaid, it shall be lawful, unless such default be waived, as herein provided, for the said Trustee, the said party of the second part, or its successor or successors in this trust, after entry as aforesaid, or other entry, or without entry, by its attorney or attorneys, agent or agents, to sell and dispose of all and singular the said railways and appurtenances, property and premises, rights, interests and franchises hereby conveyed or mortgaged, or intended so to be, at public auction, to the highest bidder, at such time and place in the City of Palestine, in the State of Texas, as it may designate, having first given public notice of the time, place and terms of such sale by advertisement published not less than once a week for six consecutive weeks in one or more newspapers published in the cities of Palestine, Texas, and New York, with the right to adjourn such sale or sales from time to time, in the discretion of such Trustee, giving reasonable notice of such adjournment, and after so adjourning, to make the sale at the time and place to which the same may be adjourned, and on the consummation of the sale upon the terms and conditions thereof, to make and deliver to the purchaser or purchasers thereof good and sufficient deed or deeds in law for the same in fee simple, which sale, made as aforesaid, shall be a perpetual bar, both at law and in equity, against the said party of the first part and all other persons lawfully claiming or to claim, the said railways and appurtenances, property and premises, rights, interests and franchises, or any part thereof so sold, by, from, through, or under it. And after deducting from the

proceeds of such sale just allowances for all expenses of said sale, including attorney's and counsel fees, and all other expenses, advances and liabilities which may have been made or incurred by the said Trustee in operating said railways or in maintaining the same, or in managing its business while in possession thereof, and all payments which may have been made by it for taxes and assessments and other proper charges upon the said railways and appurtenances, property and premises, rights, interests and franchises, or any part thereof, as well as reasonable compensation for its own services, then to apply the said proceeds to the payment of the principal of such of the aforesaid bonds as may be at such time unpaid, whether the same shall previously become due or not, and of the interest which shall, at that time, have accrued on the said principal and be unpaid, without discrimination or preference, but ratably to the aggregate of said unpaid principal and accrued and unpaid interest added together, and after satisfaction of all said bonds secured hereby, with the interest thereon, to pay over the surplus of such proceeds, if any, to the said party of the first part, or to such party as may then be entitled to receive the same.

This provision is cumulative to the ordinary remedy by foreclosure in the courts, and the Trustee herein or its successor or successors in this trust, upon default being made as aforesaid, may, at its discretion, and upon the written request of the holders of the majority in value of the said bonds then outstanding and unpaid, shall (upon being properly indemnified) institute proceedings to foreclose this mortgage or deed of trust, in such manner (by sale under the power herein given, or by suit) as the holders of a majority in value of said bonds may direct, and if no such direction is given in this behalf, then in such manner as to the said Trustee may seem most expedient.

For the debt or bonds secured hereby the said Railroad Company, the said party of the first part, is liable

*in personam*, and any deficit after exhausting the mortgaged security may be enforced against the said company or its other property, but not against the stockholders individually.

*Article Fourth.* IN CASE DEFAULT SHALL BE MADE in the payment of any semi-annual installment of interest on any of the said bonds, and the time and in the manner in the said bonds and interest coupons provided, and if such default shall continue for the period of six months after due demand made for payment, as aforesaid, then and in such case, the principal sum of all the said bonds secured hereby shall, in case a majority in interest of the holders of the said bonds, in writing, under seal, so elect, become and be immediately due and payable, anything contained in the said bonds to the contrary notwithstanding. And a majority in interest of the holders of said bonds may, by writing, under their hands and seals, executed at a meeting of the said bondholders, or without such meeting, declare or instruct the then Trustee in this trust to declare the said principal of the said bonds to be due and immediately payable, or may waive, or may instruct the said Trustee to waive such right to so declare, or may revoke any such declaration already made, in each case on such terms and conditions as such majority in interest may deem proper, provided, always, and it is hereby declared, that no such action of the Trustee or bondholders shall extend to or be taken to affect any subsequent default, or to impair the rights resulting therefrom. But such right to waive shall in like manner exist in case of subsequent defaults, to be exercised at any time before the entry of a decree of foreclosure, by a majority in interest of the bonds secured hereby.

Meetings of the holders of the said bonds hereby secured, for the determination of, or action upon, any of the questions upon which, by any of the provisions hereof, the majority in interest of said bondholders may have the right to decide, may be called by the then Trustee, or in such other mode as may be, from time to time, fixed by

such majority in interest, of the holders of said bonds in respect to such meetings, and until said bondholders shall so act, such powers may be exercised by the said Trustee in this trust, and all acts or resolutions of the said bondholders affecting the rights or remedies, or for the benefit of the said bondholders, or the duties of the Trustee, or the interest of the trust hereby created, shall be authenticated by all the signatures of all the persons assenting thereto, as well as by a record of the proceedings to be kept of any such meetings.

But it is understood and hereby expressly declared and agreed, that no act or resolution of any meeting of bondholders, or of the Trustee, nor any act or election of, or instrument executed by, a majority in interest of all said bonds, shall impair, control, or affect the rights, interests or remedies, legal or equitable, of any non-assenting bondholder, except in the particulars, and to the extent to which the same is expressly made controlling by the provisions contained herein.

But in case the mortgaged premises shall be sold under the power of sale contained in the said First or Second mortgage executed by the Railroad Company (party hereto of the first part), or in case said mortgaged premises shall be sold in pursuance of judicial proceedings for the foreclosure of either of said prior mortgages, then in any and either such case the principal of all the bonds secured hereby shall thereupon become and be immediately due and payable simultaneously with such sale.

*Article Fifth.* The party of the first part, its successors and assigns, further covenants and agrees with the party of the second part and its successors in the trust to make, execute and deliver all such further deeds, instruments and assurances as may from time to time be necessary, and as the party of the second part, or its successor in the trust, may be advised by counsel learned in the law to be necessary for the better securing to the party of the second part and its successor in the trust

the premises hereby conveyed, and for carrying out the objects and purposes of this Indenture.

*Article Sixth.* Said Railroad Company, the said party of the first part, for itself and all other persons hereafter claiming through or under it, and who may, at any time hereafter, become holders of liens junior to that of these presents, hereby expressly waives and releases all right to have the assets comprised in the security intended to be created by these presents, marshalled upon any foreclosure or other enforcement thereof, and it is expressly hereby agreed and declared that the Trustee herein, and any Court in which foreclosure of this mortgage, or administration of the trusts hereby created is sought, shall have the right to sell the entire property of every description comprised in or subject to the trusts of these presents as a whole in one single lot, if it shall in its discretion think fit. And a majority in interest of said bonds may, by instrument in writing, direct the Trustee or petition the said Court to sell the said property in such manner.

*Article Seventh.* It is hereby expressly agreed that in no case shall any claim, benefit or advantage be taken by the party of the first part, its successors or assigns, of any valuation, stay, appraisement, redemption or extension laws, and of laws requiring mortgages, liens, hypothecations, or other securities for money to be foreclosed by action therefor, now existing, or which may hereafter exist, which but for this provision herein might prevent or postpone the sale of said premises, property rights and interests to the purchaser under the powers, and upon compliance with the provisions herein provided, and said party of the first part does hereby covenant with the said party of the second part, the said Trustee or its successor or successors, in the trust hereby created, that it will not, in any manner, set up or seek to take the benefit or advantage of any such valuation, stay, appraisement, redemption or extension law.

*Article Eighth.* And it is further mutually agreed by



and between the parties hereto, and it is hereby declared to be a condition upon which the said party of the second part and its successor or successors in the trust hereby created, have assented to these presents and accepted this trust, that the said Trustee and its successor in this trust shall not in any manner be held responsible for persons employed by it, when selected with reasonable care, nor shall the Trustee be answerable except for its own willful default, and in all cases the then Trustee, the party of the second part, shall be authorized to pay such reasonable compensation as it shall deem proper to all the attorneys, officers, agents, servants and employes whom it may reasonably employ in the management of this trust; and that the said Trustee and its successor or successors shall have and be entitled to just compensation for all services it may render in connection with the management of the trust hereby created, to be paid by the said party of the first part out of the trust estate, nor shall the Trustee be compelled to perform any act under this indenture unless satisfactorily indemnified.

And it is agreed and hereby provided that the said Trustee and its successor or successors in this trust may be removed, and a successor may be appointed at any time, by any court of competent jurisdiction, upon application of a majority in interest of the holders of the then outstanding bonds hereby secured.

And it is also agreed and hereby provided that two-thirds in value of the outstanding bondholders secured hereby may, upon their own motion, at any time, with or without cause, by an instrument or instruments in writing, under seal, signed by them to that effect, and without calling a meeting of the bondholders for that purpose, remove the said Trustee and any successor to the trust hereby created, and in writing under seal appoint one or more Trustees herein, whether the last Trustee shall have been appointed by a court of competent jurisdiction or otherwise, anything herein to the contrary notwithstanding. In case of such removal and appointment of Trus-



tees by the bondholders the writing shall be signed by each bondholder or his or her agent, stating the place of residence of such holder and the serial numbers and the amounts of the bonds, and in every case the affidavit of the holder shall accompany the instruments of removal and appointment, to the effect that the party signing such instrument is the owner or holder of the bonds for which he or she signs, and stating the serial number and the amount in value of each bond and the owner's or holder's place of residence.

It is also hereby expressly agreed and provided that in case of the appointment, in any of the modes herein provided, of a successor or successors, to the trust hereby created, such successor shall be invested with all and singular the powers and duties hereby conferred and imposed upon the said Trustee herein, and hereby designated, so long as he or they may remain such successor Trustee.

*Article Ninth.* The said Trustee, the said party of the second part, hereby promises and agrees that in no case will it deliver or certify any of the bonds secured hereby, except in conformity with the provisions of this instrument.

*Article Tenth.* The said Trustee, or any successor to this Trust, shall have the right, and is hereby empowered, and authorized, on any sale under, or foreclosure of this mortgage or deed of trust to buy in the mortgaged property at a price not exceeding the amount of the mortgage bonds secured hereby, and to hold and possess the property so purchased, and to control, manage, use and operate the same and receive the incomes, rents, issue and profits thereof, for the benefit of the holders of the bonds secured hereby, and upon the trusts and subject to the terms of this Indenture.

*Article Eleventh.* And in case of any foreclosure sale, or of any sale made under any of the provisions of this deed of trust, the purchaser or purchasers thereat, shall be entitled, in making settlement for, and payment of, the purchase money therefor, to deliver to the then Trustee,

toward the payment of such purchase money, any of the said bonds and interest coupons secured hereby, and held by such purchaser or purchasers, counting such bonds and interest coupons for such purpose at a sum not exceeding that which shall be payable out of the net proceeds of such sale to the holder or holders of such bonds and interest coupons, as his or their share and proportion in that character of such net proceeds of sale, after allowing for the proportion of payment which may be required in cash for the costs and expenses of the sale, and which proportion of cash payment shall be determined and announced by the then Trustee previous to any such sale; and if such proportionate sum shall be less than the amount of such bonds or interest coupons, to make such settlement by receipting thereon for the amount to be credited thereupon.

*Article Twelfth.* Whereas, The respective Trustees in the first Mortgage, dated November 1st, 1879, and the Second Mortgage, dated June 15th, 1881, of the said party hereto of the first part (which mortgages are prior and paramount in lien to this Indenture), are, by the terms of said mortgages, respectively authorized, upon the written request of the party of the first part, to release any lands which shall have become disused for corporate purposes from the liens of said respective mortgages, upon condition that lands conveyed to the party of the first part in exchange for such released lands shall be brought under and made subject to the liens of said mortgages, or, in case of the sale of such disused lands, that the proceeds of such sale shall be paid to the said respective Trustees, to be by them applied to the purchase of bonds secured by said mortgages; *it is hereby expressly agreed* by both parties hereto that all such conveyances and releases of disused lands which shall be executed by the Trustees of the said Mortgages of November 1st, 1879, and June 15th, 1881, in conformity with the terms thereof, or which, after the satisfaction and discharge of said Second Mortgage, shall be so executed by the Trustees of said First Mortgage, only, shall, *ipso facto*, and without any release or

other conveyance by the Trustee hereof, operate also to release the property therein described from the lien of this Indenture. It is further agreed that after the bonds secured by said prior mortgages of November 1st, 1879, and June 15th, 1881, shall have been paid and said mortgages shall have been discharged and satisfied, the party of the second part, its successor or successors in this trust, may, upon the written request of the party of the first part, its successors or assigns, convey or release any lands which it or they may cease to use for its corporate purposes by reason of any changes of location of any station house, buildings or cattle yards, connected with its railroad, or by reason of any change of the track of said railroad, provided that, at the same time, such instruments shall be executed as shall cause the lien of this mortgage to attach to all lands, tenements and hereditaments taken and used by the party of the first part, its successors or assigns, in place of the lands disused as aforesaid; and that in case of the sale of any such lands, without exchanging them for other lands, the proceeds of such sale shall be paid to the party of the second part, or its successor in the trust, and be by it applied to the purchase of bonds secured by this mortgage, which bonds when purchased, shall be cancelled, and a certificate of the respective numbers and amounts of the bonds so cancelled shall be immediately furnished by the Trustee to the party of the first part, its successors or assigns.

*Article Thirteenth.* The words "Trustee," "said Trustee," and "party of second part," as used in this instrument, shall be construed to mean the Trustee or Trustees for the time being of this deed of trust, and whenever a vacancy shall exist, or any change of Trustees shall be made, to mean the surviving or continuing or successor Trustee. And any surviving, continuing or successor Trustee herein shall be possessed of, and be fully competent to exercise, all the powers and duties granted and conferred by these presents to the said Trustee named in this instrument as the party of the second part.

*Article Fourteenth.* And inasmuch as it is intended that this instrument shall be recorded in the proper offices in each of the several counties of the State of Texas wherein the railway property and premises conveyed hereby, or intended so to be, or some part thereof is situated, as nearly at the same time as possible, this Indenture further witnesseth that, although ten or more copies or counterparts thereof are simultaneously executed by said Railroad Company, the said party of the first part, in pursuance of the aforesaid resolutions of the said Company, and delivered to the said Trustee, and the said Trustee, in evidence of its acceptance of the trusts created, has likewise duly executed said ten or more copies or counterparts; all of said copies or counterparts so executed and delivered, each as an original, shall constitute but one and the same instrument.

IN TESTIMONY WHEREOF, The International and Great Northern Railroad Company, the said party of the first part, has caused its corporate name to be hereunto signed by its Second Vice President, and its corporate seal, attested by its Secretary, to be hereunto affixed; and the Trustee, the said party of the second part, has signified its acceptance of the trusteeship, herein created, by likewise causing its corporate name to be hereunto signed by its President, and its corporate seal, attested by its Secretary, to be hereunto affixed, the day and year first above written.

THE INTERNATIONAL AND GREAT NORTHERN  
RAILROAD COMPANY.

By HENRY B. KANE,

Attest: *Second Vice President.*

A. R. HOWARD,  
(Seal) *Secretary.*

THE MERCANTILE TRUST COMPANY,  
By LOUIS FITZGERALD,

Attest: *President.*

H. C. DEMING,  
(Seal) *Secretary.*

**EXHIBIT "B."****IN THE UNITED STATES CIRCUIT COURT FOR  
THE NORTHERN DISTRICT OF TEXAS.**

**THE MERCANTILE TRUST COMPANY,**  
*Trustee, Complainant,*

vs.

**THE INTERNATIONAL AND GREAT NORTHERN  
RAILROAD COMPANY,**  
*Defendant.*

**ORDER.**

Upon reading and considering the verified bill of complaint in this cause, and on motion of counsel for the complainant, and the defendant, the International and Great Northern Railroad Company, appearing by counsel and assenting thereto, and due deliberation being had it is

**ORDERED, ADJUDGED AND DECREED, by the Court that:**

1. Thomas J. Freeman be and he is hereby appointed receiver of all the railroads, lands, franchises, property and premises embraced in and covered by the mortgage made by the International and Great Northern Railroad Company to the complainant herein as trustee, dated March 1, 1892.

2. That said receiver be and he is hereby directed to take possession of the railroads, rolling stock, appurtenances, property and premises embraced in said mortgage, and to operate the same, and to collect and receive the income and tolls thereof, and to hold and retain the net revenues thereof in such manner and to the end that the same may be applied under such orders as the Court shall hereafter make in the premises, as and for the purposes provided in said mortgage of the International and Great Northern Railroad Company to the complainant herein as trustee.

3. That said Receiver is also authorized and empowered to institute and prosecute such suits as may in his judgment be necessary for the proper protection of said property, and to likewise defend any actions which have

been or may be brought seeking to establish claims, liens or demands against said property of which he is hereby appointed receiver.

4. That within sixty days from this date, said receiver shall execute a bond to the Clerk of this Court, with one or more sureties approved by this Court, or by any Judge thereof, for the benefit of whom it may concern, in the penal sum of Fifty Thousand Dollars, conditioned to the effect that he will faithfully discharge the duties of receiver herein and obey the orders of this Court.

5. IT IS FURTHER ORDERED, that all parties having in their possession any of the said mortgaged property shall deliver said property to said receiver, and each and every of the officers, directors, agents and employees of the International and Great Northern Railroad Company, and all other persons and corporations, are hereby restrained and enjoined during the pendency of this action, or until the further order of this Court, from interfering with, transferring, concealing or disposing of any of the property of the defendant, the International and Great Northern Railroad Company, embracing in its said mortgage of March 1, 1892, or from taking possession of, or in any way interfering with the same, or any part thereof, or from interfering in any manner to prevent the discharge by said receiver of his duties or the operation by him of the said property under the orders of this Court.

6. The right is reserved to the parties hereto to apply to the Court for any further or other instructions to said receiver; and this Court reserves the right to make such further orders as may be proper, touching the payment of all just claims and accounts for labor, supplies, services, salaries, and other liabilities of the defendant Company, and to charge such claims upon the mortgaged premises as prior and preferred claims; and this order is made upon the express condition that such claims, accounts and liabilities as may by this Court be so charged and all valid debts and liabilities incurred by the receiver

in the operation of said railroad and property shall be paid by the receiver hereby appointed out of the earnings of said railroad and property, or out of the corpus of said property, if such earnings shall be insufficient for that purpose.

A. P. McCORMICK,  
*United States Circuit Judge, Fifth Circuit.*

**KNOW ALL MEN BY THESE PRESENTS:**

That we, Thomas J. Freeman, as principal, and the United States Fidelity & Guaranty Company, of Baltimore, Md., as surety, are held and firmly bound unto the Judges of the Circuit Court of the United States for the Fifth Judicial Circuit and Northern District of Texas, in the sum of Fifty Thousand Dollars (\$50,000.00) to be paid to said Judges, their successors in office or assigns, for the payment of which, well and truly to be made, we and each of us bind ourselves jointly and severally, and our respective heirs, executors, administrators and successors, firmly by these presents.

Signed and sealed on this the 27th day of February, 1908.

NOW, the condition of the above obligation is such that,

WHEREAS, by an order made on the 25th day of February, 1908, in a cause therein pending wherein the Mercantile Trust Company of New York is Complainant, and the International and Great Northern Railroad Company is Defendant, said cause being filed in the United States Circuit Court for the Northern District of Texas, at Fort Worth, Texas, the above named Thomas J. Freeman was appointed Receiver of all of the railroads of the said Defendant Company situated and located in the State of Texas, and of all the property of said Company, including all its rights, franchises, money, books, accounts, lands and premises of every kind and description, either in Texas or wherever situated; and

WHEREAS, said order be and is hereby approved and said Thomas J. Freeman confirmed in his appointment



and continued as such Receiver, and that he give bond as required by said order in the sum of Fifty Thousand (\$50,000.00) Dollars, with good and solvent surety to be approved by a Judge of said Court.

Now, if the said Thomas J. Freeman shall duly account for what shall come into his hands as such Receiver and pay and apply the same from time to time as said Receiver may be directed by said Court, and obey such orders as said Court may make in the direction of said trust, and if said Thomas J. Freeman shall fully discharge the duties of said trust, then the above obligation to be void; else to remain in full force and effect.

IN WITNESS WHEREOF the parties hereto have affixed their signatures, this February 27th, 1908.

THOMAS J. FREEMAN, *Principal.*

THE UNITED STATES FIDELITY AND  
GUARANTY COMPANY (Seal)

By W. L. LEEDS

And R. E. L. SANER,

*Attorneys in Fact  
Surety.*

### EXHIBIT "C."

NO. 2514 EQUITY.

CIRCUIT COURT OF THE UNITED STATES,  
NORTHERN DISTRICT OF TEXAS.

THE FARMERS' LOAN AND TRUST COMPANY, Trustee,

vs.

*Complainant,*

INTERNATIONAL AND GREAT NORTHERN RAILROAD COMPANY,

THE MERCANTILE TRUST COMPANY AND THOMAS J. FREEMAN, as Receiver of the International and Great Northern Railroad Company,

*Defendants.*

### BILL OF COMPLAINT.

TO THE HONORABLE THE JUDGES OF THE CIRCUIT COURT OF  
THE UNITED STATES FOR THE NORTHERN DISTRICT OF  
TEXAS, SITTING IN EQUITY.

The Farmers' Loan and Trust Company, a corpora-

tion duly created by and existing under the laws of the State of New York, a citizen of said State, and having its principal office and place of abode in the City of New York in said State, by leave of court first duly had and obtained, brings this its bill of complaint against the International and Great Northern Railroad Company, a corporation duly created by and existing under the laws of the State of Texas, a citizen of said State, and having its principal office and place of abode in the City of Palestine in said State; The Mercantile Trust Company, a corporation duly created and existing under the laws of the State of New York, a citizen of said State, and having its principal office and place of abode in the City of New York in said State; and Thomas J. Freeman, as Receiver of said International and Great Northern Railroad Company, a citizen of the State of Texas, and having his place of abode in the City of Palestine in said State;

And thereupon your orator complains and says:

I. Your orator is a corporation duly organized and existing under the laws of the State of New York and a citizen and resident of said State, and as such corporation is fully authorized and empowered to hold in trust the property conveyed to it in trust, as hereinafter fully stated, and to execute the trusts reposed in it under and by virtue of the mortgage and deed of trust hereinafter described.

II. The defendant, International and Great Northern Railroad Company (hereinafter called the "Railroad Company"), is a corporation organized and existing under the laws of the State of Texas and a citizen and resident of said State; the defendant The Mercantile Trust Company is a corporation organized and existing under the laws of the State of New York and a citizen and resident of said State; and the defendant Thomas J. Freeman is a citizen of the State of Texas and a resident of said State.

III. Your orator is informed and believes, and therefore alleges, that the Railroad Company now owns, and

until the latter part of the month of February, 1908, possessed and operated, a line of railroad in the State of Texas extending from the town of Longview, in the County of Gregg in said State, through said county and through the counties of Rusk, Smith, Cherokee, Anderson, Leon, Robertson, Milam, Williamson, Travis, Hays, Comal, Bexar, Medina, Frio, La Salle, Encinal and Webb to Laredo in said last-mentioned county; and from the town of Mineola in Wood County, to Troup, in Smith County, and from the City of Palestine, in Anderson County, through the counties of Houston, Trinity, Walker and Montgomery to Houston, in Harris County, and from the town of Spring, in Harris County, through the counties of Montgomery, Waller, Grimes, Brazos, Robertson, Falls, McLennan, Limestone, Hill, Navarro, Ellis and Johnson to the City of Fort Worth, in Tarrant County, with branches and branch lines from the town of Overton to the town of Henderson, in Rusk County; from the town of Round Rock to Georgetown, in Williamson County; from the town of Phelps to the town of Huntsville, in Walker County, and from the City of Houston, in Harris County, to the town of Columbia in Brazoria County; from Navasota in Grimes County to Madisonville in Madison County; from Calvert Junction to Calvert, from Waco Junction to East Waco; also the railway and railway tracks and property appurtenant thereto, and certain tracts of land in and adjacent to the City of Houston, in Harris County, known as the Houston Belt Terminals; a total distance of about 1106 miles of completed railroad, all in the State of Texas; that all of such lines of railroad and branches (with the exception of the line from Austin to Laredo, a distance of 233 miles, the line from the town of Spring, in Harris County, to the City of Fort Worth in Tarrant County, a distance of 271.8 miles; and said branch lines of railroad from Navasota to Madisonville, a distance of 44.7 miles; from Calvert Junction to Calvert, a distance of 5.3 miles; from Waco Junction to East Waco, a distance of 1.7 miles; also the Houston Belt Ter-

minals, 10.2 miles above mentioned), were so owned, possessed and operated by the Railroad Company on and prior to June 15, 1881, the latter named lines, branches and terminals having been since that date acquired by the said defendant.

IV. On or about the 15th day of June, 1881, and thereafter, the Railroad Company, by its officers duly authorized, and under its corporate seal, duly made and executed its bonds as hereinafter alleged to an amount of principal aggregating ten million three hundred and ninety-one thousand dollars (\$10,391,000), said bonds being dated on said 15th day of June, 1881, and payable in gold coin of the United States of the then standard of weight and fineness, at the agency of the Railroad Company in the City of New York, on the first day of September, in the year 1909, and bearing interest payable upon presentation of coupons therefor annexed to said bonds at said agency, at the rate of six per cent. per annum from the first day of March, 1881, said interest being payable semi-annually, in like gold coin, on the first days of March and September in each year; all said bonds and coupons being severally in the form shown in the mortgage and deed of trust hereinafter referred to.

V. On or about the 27th day of January, 1892, by an agreement between the Railroad Company and (among others) the holders of all said bonds then outstanding under said mortgage and deed of trust, the interest upon said bonds was reduced to four and one-half per cent. per annum for a period of six years from and after September 1, 1891, such reduction to extend to and include the interest payable on September 1, 1897; and it was further agreed that after September 1, 1897, and until the maturity of said bonds, the same should bear interest at the rate of five per cent. per annum; provided, however, that in case of default continued for the period of ninety days in the payment of any coupons upon said bonds unmatured at the date of said agreement, the original rate of interest, namely, six per cent., should be re-

stored, and such coupons should be collectible and enforceable at such original rate of interest. All the bonds thereafter issued under said mortgage and deed of trust by the Railroad Company bore interest in accordance with the provisions of the said agreement.

VI. On or about the 15th day of June, 1881, the Railroad Company, being thereunto by law duly authorized, duly made, executed, acknowledged and delivered to your orator, as trustee, its certain mortgage and deed of trust, dated on that day, a copy of which is annexed hereto marked Exhibit A and made a part hereof, and thereby conveyed to your orator, as trustee, and to its successor or successors in said trust forever, all and singular the lands, tenements and hereditaments of the Railroad Company then owned or thereafter to be acquired by it, including all its railroads, tracks, rights of way, main lines, branch lines, superstructures, depots, depot-grounds, station-houses, engine-houses, car-houses, freight-houses, wood-houses, sheds, watering places, work shops, machine shops, bridges, viaducts, culverts, fences and fixtures, together with all its leases, leased or hired lands, leased or hired railroads, and all its locomotives, tenders, cars, carriages, coaches, trucks and other rolling stock, its machinery, tools, weighing scales, turn-tables, rails, wood, coal, oil, fuel, equipment, furniture and material of every name, nature and description, then held or thereafter to be acquired, together with all the corporate rights, privileges, immunities and franchises of the Railroad Company then held or thereafter to be acquired (including the franchise to be a corporation), and all the tolls, fares, freights, rents, income, issues and profits thereof, and all the reversion and reversions, remainder and remainders thereof, in trust, however, for the uses and purposes in said mortgage mentioned, excepting, however, and reserving from the lien of said mortgage, all land grants, lands, land certificates, town lots and town sites then or at any prior time owned or controlled by the Railroad Company, which were not, on the first day of November,

1879, and had never since been actually occupied and in use by the said Company and necessary to the occupation and maintenance of its lines of railroad; said property, premises, things, rights, privileges, immunities and franchises to be had and to be held unto your orator, or its successor or successors, in trust for the owners and holders of the bonds to be issued under said mortgage and deed of trust, as hereinafter set forth, and of the coupons thereto attached, and subject to the possession, control and management of the directors of the Railroad Company, its successors or assigns, so long as it or they should well and truly perform all and singular the stipulations of said bonds and the covenants of said mortgage and deed of trust. And your orator, the said trustee, then duly accepted the trust created by said mortgage and deed of trust and united in the execution of the same to evidence such acceptance. Said mortgage and deed of trust was thereafter duly recorded in each of the counties in which was situated any part of the mortgaged property.

VII. The said mortgage and deed of trust was and is the proper act and deed of the Railroad Company, by it authorized, made and delivered in all respects in conformity with law, and the same was and is a valid conveyance for the purposes therein stated, and is now a valid and subsisting lien upon all said property therein described and upon all said lines, branches and terminals hereinabove in paragraph No. III. described, and upon the Railroad Company's franchises, railroads, tracks, rights of way, main lines, branch lines, superstructures, depots, depot grounds, station-houses, engine-houses, car-houses, freight-houses, wood-houses, sheds, watering places, work shops, machine shops, bridges, viaducts, culverts, fences and fixtures, together with all its leases, leased or hired lands, leased or hired railroads, and all its locomotives, tenders, cars, carriages, coaches, trucks and other rolling stock, its machinery, tools, weighing scales, turn-tables, rails, wood, coal, oil, fuel, equipment, furniture and material of every name, nature and description.

VIII. In and by said mortgage and deed of trust it was provided that the bonds that might be issued under said mortgage should not exceed the number and amount of bonds then issued under a then existing second mortgage executed by the Railroad Company on or about November 1, 1879, to Samuel Thorne, William Walter Phelps and John S. Barnes, trustees, and surrendered to your orator in exchange for bonds issued under said mortgage or deed of trust dated June 15, 1881, until the said second mortgage be satisfied and discharged of record, and should not exceed five thousand two hundred and eighty-four bonds for the sum of \$1,000 each, and five hundred bonds for the sum of \$500 each, with the addition of ten bonds for \$1,000 each, for each mile of completed railroad which had been constructed or acquired by the Railroad Company since the first day of May, 1880, or which should be newly constructed or acquired by the Railroad Company, its successors or assigns, after the execution of said mortgage and deed of trust dated June 15, 1881; and that no bond should be issued for railroads to which the Railroad Company, its successors or assigns, had not a good and valid title; and that if there should be any lien or encumbrance upon railroads thereafter acquired by the Railroad Company, its successors or assigns, other than the two mortgages already executed by the said International and Great Northern Railroad Company and then outstanding, dated November 1, 1879, the issue of new bonds on account of such railroads should be withheld, to the amount of such lien or encumbrance, until the same be discharged; and further, that your orator, or its successor in the trust, might, in its discretion, accept a certificate, signed by the president and chief engineer of the Railroad Company, its successors or assigns, as conclusive evidence of the number of miles of completed railroad so newly constructed or acquired.

IX. From time to time the Railroad Company, under and in accordance with the provisions of said mortgage



and deed of trust, and due corporate action having been had, under its corporate seal has made, executed and delivered, and your orator, as Trustee under said mortgage and deed of trust, in accordance with the provisions thereof and in the manner therein provided, has certified, in the form therein set forth, ten thousand, one hundred and forty-one (10,141) of said bonds hereinbefore and in said mortgage and deed of trust described, each for the sum of \$1,000, and five hundred (500) of said bonds, each for the sum of \$500, amounting in the aggregate to the principal sum of ten million, three hundred and ninety-one thousand dollars (\$10,391,000), all of which bonds, as your orator is informed and believes, have been duly issued and negotiated for value by the Railroad Company, and are now valid outstanding obligations of the Railroad Company, entitled to the lien and security of said mortgage and deed of trust, so that on the first day of March, 1908, and for some time prior thereto, there had been issued and outstanding under said mortgage and deed of trust, and entitled to the lien and security thereof, bonds amounting in the aggregate to the principal sum of ten million, three hundred and ninety-one thousand dollars (\$10,391,000), bearing coupons for the interest maturing on and after March 1, 1908.

The holders and owners of said bonds and coupons are numerous, and the names and residences of many of such holders are unknown to your orator, so that your orator cannot now state the same, and it is impossible that they should be made parties to this your orator's bill of complaint.

X. In and by said mortgage and deed of trust to your orator it was, among other things, provided that in case the Railroad Company, its successors or assigns, should fail to pay the interest on any of said bonds at any time when the same might become due and payable, according to the tenor thereof, and should continue in such default for six months after such payment had been demanded at its or their agency in the City of New York,

then and thereupon the principal of all of the bonds thereby secured should be and become immediately due and payable, provided the said trustee should give written notice to the Railroad Company, its successors or assigns, of its option to that effect, while such default continued, which notice it should be bound to give, if required in writing to do so by the holders of twenty-five per centum of said bonds then outstanding; and that in such case, or upon the principal of said bonds becoming in any other way due and payable, and remaining unpaid, in whole or in part, after demand thereof, the said trustee, or its successor in the trust, might, in its discretion, and should, upon the request of the holders of fifty per centum of the bonds then outstanding, take, with or without entry or foreclosure, actual possession of said railroad and of all and singular the property, things and effects thereby conveyed, and personally or by attorney, manage and operate the same, and receive all the tolls, rents, income and profits thereof, until such time as the said bonds and the interest thereon be fully paid or satisfied, and should apply the moneys so received by it, first, to the expenses of the trust thereby created, the management of the said railroad and its appurtenances, and the needful repairs thereof; next, to the payment of interest overdue upon the said bonds and interest upon delayed interest; and afterwards, to the payment of the principal of said bonds. And it was further therein provided that your orator, or its successor in the trust, upon becoming entitled to take possession of the railroad and property aforesaid, might, in its discretion, and should, on the written request of holders of at least one-half of the bonds then unpaid and outstanding, cause the premises so mortgaged to be sold, either as an entirety or in such parcels as it should deem necessary or proper, having due regard to the interests of all parties, to the highest bidder at public auction.

XI. In and by said mortgage and deed of trust it was, among other things, further provided that your orator

should, after deducting from the proceeds of such sale the cost and expenses thereof, and of the execution of said trust, and all payments for taxes, assessments and counsel fees, and its own reasonable compensation, apply so much of the proceeds as might be necessary to the payment of the principal and interest remaining unpaid upon the said bonds and coupons, together with interest upon overdue coupons down to the time of the sale without giving preference to either principal or interest; and said mortgage and deed of trust declared that it was the intention thereof, that, so long as the railroad and its appurtenances should be managed by the trustee or a receiver as a going concern, the income should be applied to the payment of interest in preference to the principal, but that after a sale of the railroad and its appurtenances no such preference should be made in the distribution of the proceeds.

XII. In and by said mortgage and deed of trust, it was, among other things, further provided that upon any sale of mortgaged premises, whether by the trustee or under decree of the Court, the holders of the bonds thereby secured or any of them, or the trustee on behalf of all of them, should have a right to purchase upon equal terms with other persons; and further that the amount of the bonds secured by the said mortgage or deed of trust should be receivable upon such sale as cash for the amount of cash which would be payable on such bonds out of the proceeds of such sale; and further, that in case of the purchase of the said property or any part thereof by the trustee, the same should be held for the benefit of the bondholders, in proportion to their respective interests in the bonds, and the property thus purchased should be conveyed to such person or corporation as might be designated by a majority in value of the bondholders present at a meeting of the bondholders in the city of New York, regularly called by the trustee, upon reasonable public notice published in two newspapers of that city, provided that such conveyance should be made upon such terms as

would, in the judgment of the trustee, secure to each and every bondholder his just proportion of interest in the property purchased as aforesaid; and further that in no case should any claim, benefit or advantage be taken by the Railroad Company, its successors or assigns, of any valuation, appraisal, extension or relief laws to prevent such entry or sale as aforesaid, and that nothing in said mortgage and deed of trust contained should be construed as limiting the right of your orator, as trustee thereunder, to apply to the Courts for judgment or decree of foreclosure and sale under the said mortgage and deed of trust, or for the usual relief in the course of such proceedings; and further, that your orator as such trustee might, in its discretion, apply to any competent court for relief by way of foreclosure or otherwise, if so advised by counsel.

XIII. The said mortgage and deed of trust contained provisions as to exchanging bonds issued thereunder for bonds of said prior issue secured by said mortgage of November 1st, 1879, to Samuel Thorne, William Walter Phelps and John S. Barnes, as trustees, and further provided that in the event of all the income bonds issued under the said mortgage to said Thorne, Phelps and Barnes being deposited with your orator or its successor in the trust, it would forthwith use its best diligence to procure from said Thorne, Phelps and Barnes, trustees of said mortgage, a satisfaction and discharge upon the record of said mortgage to them, and delivering to them, if necessary for that purpose, the said income bonds, duly cancelled, and taking all steps that might be necessary or proper for the purpose of procuring the complete discharge of the lien of the said mortgage to them, to the end that the mortgage to your orator might become a lien upon all the property therein mentioned, second only to a first purchase money mortgage, executed to John S. Kennedy and Samuel Sloan, trustees, and dated November 1, 1879.

XIV. In the said mortgage or deed of trust it was

also, among other things, provided that your orator or its successor in the trust might take such legal advice and employ such assistance as might be necessary in its judgment for the proper discharge of its duties, and should be entitled to receive just and reasonable compensation for all duties performed by it in the discharge of its said trust, and for all of its reasonable expenses and disbursements, which compensation, it was provided, should be paid by the Railroad Company, its successors or assigns, and should also be a lien upon and payable out of the funds coming into the hands of your orator or its successor in the trust.

XV. In and by said mortgage and deed of trust it was further provided that upon the payment of the principal and interest of all the bonds thereby secured, the estate thereby granted to your orator should be void, and the right to all the real and personal property thereby granted and conveyed should revert to and revest in the Railroad Company, its successors or assigns, in law and in equity, without any acknowledgment of satisfaction, reconveyance, surrender, re-entry or other act.

XVI. The said mortgage dated November 1st, 1879, so made as aforesaid by the Railroad Company to Samuel Thorne, William Walter Phelps and John S. Barnes, as trustees, has been duly satisfied and canceled and discharged of record, and the bonds thereby secured duly canceled, and the same no longer constitutes a lien upon any of the property covered by the said mortgage and deed of trust made to your orator as aforesaid.

XVII. The Railroad Company, as your orator is informed and believes, has failed to pay the interest, amounting to the sum of \$259,775, on all the said bonds so issued and outstanding under said mortgage and deed of trust of June 15th, 1881, as aforesaid, which became due and payable on the 1st day of March, 1908, although demand for the payment of some of such interest was duly made at its agency in the City of New York, and said sum still continues in default and is now due and payable as interest upon said bonds.

XVIII. Your orator is informed and believes, and therefore alleges, that on or about the 26th day of February, 1908, in a certain cause in equity pending in this court wherein said The Mercantile Trust Company was complainant and the Railroad Company was defendant, brought for the purpose of foreclosing a so-called third mortgage alleged to have been made by the Railroad Company to The Mercantile Trust Company on or about the first day of March, 1892, such proceedings were had that an order was made by this court appointing the defendant Thomas J. Freeman, receiver of the said railroads, franchises and premises hereinbefore described, and the income thereof, subject as aforesaid to the lien of said mortgage and deed of trust to your orator; and said defendant Freeman, by virtue and under authority of said order, has entered into and is now in possession of and operating all of said railroads and other property hereinbefore described, which are thereby in the custody of this court.

XIX. By means of the appointment of the defendant Freeman, as receiver aforesaid, already made, the defendant The Mercantile Trust Company, as Trustee under the mortgage to it, claims and asserts a lien or right upon and to the income, issues and profits of the said railroads, property and premises, superior to the lien of the said mortgage and deed of trust to your orator.

XX. Your orator is informed and believes and therefore alleges that the Railroad Company is insolvent and wholly unable to pay its debts and obligations and that the said property and premises covered by the said mortgage and deed of trust so made to your orator, as aforesaid, are and constitute very inadequate security for the payment of the amounts due and to become due for principal and interest upon the said bonds issued under said mortgage and deed of trust, and that the said mortgaged property and premises are so situated that they cannot, nor can any part thereof, be sold in parcels without great injury to the interests of the beneficiaries under your



orator's trust, namely, the holders of the bonds secured by the said mortgage or deed of trust so made to your orator as aforesaid; that in order to protect the rights of your orator and of the said bondholders in and to the said property and premises, including the incomes, issues and profits thereof, and to preserve the said property and premises and the revenues thereof which form an essential element of the security under said mortgage and deed of trust, and so that the interests of the holders of the bonds issued under said mortgage and deed of trust may be preserved, a receiver or receivers should be forthwith appointed of the property, premises, rights, franchises, income, issues, profits and revenues covered by said mortgage and deed of trust.

XXI. Your orator is informed and believes and therefore alleges that prior to the execution and delivery to it of said mortgage and deed of trust, the Railroad Company made, executed and delivered unto John S. Kennedy and Samuel Sloan, as trustees, its so-called first mortgage and deed of trust, dated November 1, 1879, wherein and whereby it conveyed to the said trustees all and singular its lands, tenements and hereditaments then owned or thereafter to be acquired by it, including all its railroads, franchises, income, issues and profits, in trust, for the owners and holders of bonds to be issued under said mortgage and deed of trust, bearing interest at the rate of six per cent. per annum, payable semi-annually on the first days of May and November in each year and to become due and payable on the 1st day of November, in the year 1919, a large number of which bonds have been issued and are now outstanding under said mortgage and deed of trust dated November 1, 1879. Your orator is informed and believes and therefore alleges that the interest upon said so-called first mortgage bonds has been paid up to and including the instalment thereof which fell due on the 1st day of November, 1907.

XXII. Your orator is informed and believes and therefore alleges that the defendants, The Mercantile



Trust Company and Thomas J. Freeman, as receiver of said International and Great Northern Railroad Company, have or claim to have some interest in or lien upon the premises and property covered by the said mortgage and deed of trust to your orator sought to be foreclosed in this suit, or some part thereof; but such interest or lien, if any, has accrued subsequently to the lien of the said mortgage and deed of trust to your orator, and is subject and subordinate thereto; that the defendant Freeman, as receiver as aforesaid, also now holds and detains and claims possession of and title to a large amount of rolling stock and equipment and other personal property which is subject to and covered by the said mortgage and deed of trust to your orator and is claimed by your orator as trustee aforesaid under and by virtue of said mortgage and deed of trust; and that the said Freeman, as said receiver, also holds and detains and claims title to certain of the income, issues, profits, revenues and earnings of the Railroad Company which are also subject to and covered by the said mortgage and deed of trust to your orator, and are likewise claimed by it as trustee aforesaid.

XXIII. The holders of a large number of said bonds and coupons issued and outstanding under said mortgage and deed of trust made to your orator as aforesaid have requested your orator to proceed to foreclose said mortgage and to take such steps as your orator may be advised to protect and enforce the rights and interests of your orator as Trustee under said mortgage and deed of trust and of the said holders of said bonds and coupons, and your orator has been advised by counsel to apply to this Court for relief in the premises.

XXIV. By reason of the matters and things hereinbefore alleged there is due to your orator as trustee under the said mortgage and deed of trust, the amount of said coupon interest which fell due on said bonds on the first day of March, 1908, as aforesaid, to wit, the sum of \$259,775, with interest thereon from said first day of March.

No proceedings have been had at law or in equity for the collection of said mortgage debt, or any part thereof, save only this suit.

XXV. In consequence of the embarrassed condition of the financial affairs of the Railroad Company and on account of the many difficulties which are manifest upon and from the allegations hereinbefore set forth, involved in the execution of your orator's said trust, it is difficult for your orator, as trustee, to execute adequately its said trust in the way and manner specified and provided in and by the said mortgage and deed of trust, without the aid and interposition of this Honorable Court sitting in equity, nor can the said trust be executed, as your orator is advised and charges, and the rights of all parties interested be ascertained and fully protected in the premises, otherwise than by judicial sale of the mortgaged premises and all the franchises, property, premises and appurtenances covered by the said mortgage and deed of trust to your orator.

XXVI. Your orator further shows that this is a suit of a civil nature in equity and that the matter in dispute, exceeds, exclusive of interests and costs, the sum of \$5,000.

In consideration whereof, and forasmuch as your orator is remediless in the premises by the rules of the common law, and can have adequate relief only in a Court of Equity, where matters of this nature are properly cognizable and relievable; to the end, therefore, that the said defendants may, if they can, show why your orator should not have the relief hereby prayed, and that they may separately and severally answer make (but not under oath, their answer under oath being hereby expressly waived), according to the best of their knowledge, information and belief, to all the matters and charges aforesaid, and that as fully in every respect as if the same were here again repeated and they thereunto particularly interrogated; that your orator be placed in possession of the mortgaged premises personally, or that a receiver

or receivers may be appointed in this cause of all and singular the rights, franchises and property, of every name and nature, including the income, issues, profits, revenues and earnings, of the said defendant, International and Great Northern Railroad Company, covered by said mortgage and deed of trust of June 15th, 1881, with power and authority to operate said railroad and carry on the business of said Railroad Company under the protection of this Court with all the usual powers and duties of receivers in such cases, and with authority to proceed to recover, by suit or otherwise, all property in the hands of other parties belonging to said Railroad Company, and all moneys justly due to it and unlawfully withheld by any person on any pretense whatever; that an injunction may issue out of this Court, restraining and enjoining the said Railroad Company and all and every its agents and servants, and all other persons, from in any way interfering with the possession or control of the property of said Railroad Company under the control of said receiver or receivers, and from selling, transferring, conveying, leasing, or otherwise disposing of or incumbering any of the property, rights or franchises of the said Railroad Company; that all the rights and franchises, and all the property, real and personal, of the said Railroad Company may be declared subject to the lien of the said mortgage and deed of trust dated June 15th, 1881; that an account may be taken of the amounts due for coupon interest upon the bonds secured by the said mortgage and deed of trust and now outstanding, with interest thereon; that an account may also be taken of the amount of the principal outstanding and unpaid upon each and all of the bonds secured by said mortgage and deed of trust; that the amounts so found due for principal and interest may be found to be a lien on the property of the said Railroad Company according to the terms of said mortgage and deed of trust and prior and superior to the interests or liens or claims of the defendants therein and thereto; that the said Railroad Company may

be decreed to pay the amounts so found to be due upon said coupons for interest, and the interest upon said coupons, within a short day to be fixed by the Court; that in default thereof, all the said mortgaged property and franchises of the said Railroad Company may be sold under a decree of this Court and according to law and the practice of this Court, to satisfy the entire amount of principal and unpaid interest upon the said bonds and coupons; that out of the proceeds of said sale, or the net earnings while in the hands of said receiver so to be appointed, there may be paid, first, the costs and expenses of your orator in this suit, including proper attorneys', solicitors' and counsel fees, with a proper compensation to your orator for its own services as trustee, to be allowed by the Court, and that the residue thereof may be applied to the payment of the amounts due upon the said mortgage bonds and coupons thereto, with interest thereon; that if there be any surplus, it may be applied in such way as this Court may direct; that all the defendants in this suit may be barred of and from any equity of redemption of and in the said property and franchises; and that any deficiency on such sale may be entered in this cause as a judgment against the said International and Great Northern Railroad Company; and that your orator may have such other and further relief in the premises as the circumstances of the case may require and as may be agreeable to equity;

May it please your Honors to grant unto your orator a writ of subpoena issuing out of and under the seal of this Honorable Court directed to the defendants International and Great Northern Railroad Company, The Mercantile Trust Company, and Thomas J. Freeman, as Receiver of said International and Great Northern Railroad Company  
to appear and answer this bill.

And your orator will ever pray, etc.

THE FARMERS' LOAN AND TRUST COMPANY,

By

E. S. MARSTON,  
President.

Attest:

A. V. HEELY,  
(SEAL) Secretary.

TURNER, ROLSTON & HORAN,  
BAKER, BOTTS, PARKER & GARWOOD,  
Solicitors for Complainant.

JAMES F. HORAN,  
JAMES A. BAKER, JR.,  
Of Counsel.

#### EXHIBIT "A."

#### INTERNATIONAL AND GREAT NORTHERN RAILROAD COMPANY.

#### SIX PER CENT. GOLD MORTGAGE OF 1881.

THIS INDENTURE, made the fifteenth day of June, in the year of our Lord one thousand eight hundred and eighty-one, between the INTERNATIONAL AND GREAT NORTHERN RAILROAD COMPANY, a corporation existing under the laws of the State of Texas, of the first part, and the FARMERS' LOAN AND TRUST COMPANY, of the City of New York, a corporation existing under the laws of the State of New York, of the second part:

WHEREAS, the party of the first part heretofore, on the first day of November, in the year 1879, executed a certain indenture of mortgage to Samuel Thorne, William Walter Phelps and John S. Barnes, trustees, to secure four thousand four hundred and seventy-four income bonds for the sum of one thousand dollars each and five hundred income bonds for the sum of five hundred dollars

each, and also a series of similar bonds for the sum of one thousand dollars each, to the amount therein prescribed; all of them bearing interest to such amount, not exceeding eight per centum per annum, as should be earned within each calendar year, beginning with the year 1879, as therein set forth:

AND WHEREAS, many holders of the said bonds desire to exchange them for bonds of this company, bearing interest at the rate of six per centum per annum, absolutely and free from all contingency, to be secured in the manner hereinafter described:

AND WHEREAS, the party of the first part had, on May 1, 1881, issued five thousand two hundred and eighty-four income bonds, as hereinbefore described, for the sum of one thousand dollars each, and five hundred such income bonds for the sum of five hundred dollars each, and intends to issue in exchange for said bonds a like amount of bonds in the form hereinafter prescribed and secured by this mortgage, and also a series of similar bonds, for the sum of one thousand dollars each, to the amount hereinafter prescribed: all of which bonds, notwithstanding the same may be issued at different times, are equally secured by these presents, are to be authenticated by a certificate signed by the party of the second part, and are to be substantially in the following form:

**INTERNATIONAL AND GREAT NORTHERN  
RAILROAD COMPANY.**

No.

\$1,000.

INTEREST AT SIX PER CENTUM PER ANNUM.

DUE SEPTEMBER 1, 1909.

The International and Great Northern Railroad Company of Texas, for value received, hereby acknowledges itself indebted to the Farmers' Loan and Trust Company, of the City of New York, trustee, in the sum of one thousand dollars, United States gold coin, which sum the said company promises to pay, at its agency in the City of New York, to the bearer, unless this bond is registered,

and if registered, then to the registered holder thereof, in gold coin of the United States, of the present standard of weight and fineness, on the first day of September, in the year 1909, together with interest thereon at the rate of six per centum per annum from the first day of March, 1881, payable semi-annually, in like gold coin, on the first days of March and September in each year, upon presentation of the annexed coupons, as they severally become due, at the said agency of the company in the City of New York.

This bond is one of a series of like tenor and date, of which 5, 284 for \$1,000 each, and 500 for \$500 each, are intended to be issued in exchange for a like amount of income bonds issued before the first day of May, 1881, and secured by a second mortgage, and ten for \$1,000 each, but no more, may be issued for each mile of completed road thereafter constructed or acquired by the said company; all bonds of this series being equally secured by a mortgage or deed of trust, of even date herewith, executed by the said company to the Farmers' Loan and Trust Company of the City of New York, as trustee, covering the entire railroad of the said company, together with all the rolling stock, equipment, appurtenances, income, franchises (including the franchise to be a corporation), privileges and immunities of the said company, now owned or hereafter acquired, and also by the deposit with the said trustee of income bonds under the existing second mortgage upon the same property, executed to Samuel Thorne, William Walter Phelps and John S. Barnes, as trustees, to an amount equal to the bonds of this series issued, or to be issued, until the said existing second mortgage is fully satisfied and discharged of record: which income bonds are to be held by the said trustee for the protection of bonds of this series.

Upon default in the payment of interest on this bond for six months after it becomes payable and has been demanded, the trustee may, subject to the provisions of the said mortgage, declare the principal of all the bonds im-



mediately payable, and must do so, if required by the holders of one-fourth of all such bonds outstanding.

This bond may be registered on the books of the company at its agency in the City of New York, after which no transfer except upon the books of the company will be valid; but it is not to be deemed registered until the name of the holder is registered upon the back of the bond as well as upon the books of the company. It may be registered in favor of "bearer," after which it will be transferable by delivery alone, until again registered in the name of the holder.

This bond shall not become obligatory until the certificate indorsed hereon is signed by the said trustee or its successor in the trust.

IN WITNESS WHEREOF, the said International and Great Northern Railroad Company has caused this bond to be subscribed by its president or vice-president, and assistant treasurer, and its corporate seal affixed hereto, this fifteenth day of June, in the year one thousand eight hundred and eighty-one.

THE INTERNATIONAL AND GREAT NORTHERN  
RAILROAD COMPANY,

by

President.

Assistant Treasurer.

(COUPON.)

The International and Great Northern Railroad Company will pay to the bearer, at its agency in the City of New York, \_\_\_\_\_ dollars, in gold coin, on \_\_\_\_\_, being six months' interest due that day on Bond No. \_\_\_\_\_

(TRUSTEE'S CERTIFICATE.)

It is hereby certified, That the International and Great Northern Railroad Company has executed to the Farmers' Loan and Trust Company of the City of New York a mortgage or deed of trust, as described in the within bond, and that no more of such bonds have been certified

to by the undersigned than are authorized by said deed of trust.

THE FARMERS' LOAN AND TRUST COMPANY,  
Trustee,

by

President.

NOW, THEREFORE, THIS INDENTURE WITNESSETH: That the said International and Great Northern Railroad Company, in order to secure the payment of the said bonds and interest thereon, and in consideration of the sum of one dollar to it paid by the party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, sold, transferred and conveyed, and does hereby grant, bargain, sell, transfer and convey unto the said Farmers' Loan and Trust Company of the City of New York, party of the second part, and to its successor or successors in this trust, forever, all and singular the lands, tenements and hereditaments of the said railroad company, now owned or hereafter to be acquired by it, including all its railroads, tracks, rights of way, main lines, branch lines, superstructures, depots, depot grounds, station-houses, engine-houses, car-houses, freight-houses, wood-houses, sheds, watering places, work shops, machine shops, bridges, viaducts, culverts, fences and fixtures, together with all its leases, leased or hired lands, leased or hired railroads, and all its locomotives, tenders, cars, carriages, coaches, trucks and other rolling stock; its machinery, tools, weighing scales, turn-tables, rails, wood, coal, oil, fuel, equipment, furniture and material of every name, nature and description), now held, or hereafter to be acquired, together with all the corporate rights, privileges, immunities and franchises of said railroad company, now held or hereafter to be acquired (including the franchise to be a corporation), and all the tolls, fares, freights, rents, income, issues and profits thereof, and all the reversion and reversions, remainder and remainders thereof, in trust, however, for the uses and purposes hereinafter mentioned, excepting, however, and reserving

from the lien of this mortgage, all land grants, lands, land certificates, town lots and town sites now or at any prior time owned or controlled by the said company, which were not, on the first day of November, 1879, and have never been actually occupied and in use by the said company and necessary to the occupation and maintenance of its lines of railroad:

TO HAVE AND TO HOLD the said property, premises, things, rights, privileges, immunities and franchises hereby conveyed, or intended so to be, unto the Farmers' Loan and Trust Company of the City of New York, party of the second part, or its successor or successors, in trust for the owners and holders of the said bonds, or any of them, subject to the terms and stipulations of said bonds and of the coupons thereto attached, and subject also to the possession, control and management of the directors of the party of the first part, its successors or assigns, so long as it or they shall well and truly perform all and singular the stipulations of the said bonds and the covenants of this indenture.

That the bonds which may be issued under this mortgage shall not exceed the number and amount of bonds then issued under the existing second mortgage, executed by said company on the first day of November, 1879, to Samuel Thorne, William Walter Phelps and John S. Barnes, trustees, and surrendered to the party of the second part in exchange for bonds issued under this mortgage, until the said second mortgage is satisfied and discharged of record, and shall not exceed five thousand two hundred and eighty-four bonds for the sum of \$1,000 each, and five hundred bonds for the sum of \$500 each, with the addition of ten bonds, for \$1,000 each, for each mile of completed railroad which has been constructed or acquired by the party of the first part since the first day of May, 1880, or which shall be newly constructed or acquired by the party of the first part, its successors or assigns, after the execution of this mortgage; and no bond shall be issued for railroads to which the party of

the first part, its successors or assigns, have not a good and valid title; and if there is any lien or incumbrance upon railroads hereafter acquired by the party of the first part, its successors or assigns, other than the two mortgages already executed by the said company and now outstanding, dated the first day of November, 1879, the issue of new bonds on account of such railroads shall be withheld, to the amount of such lien or incumbrance, until the same is discharged.

That the said trustee, or its successor in the trust, may, in its discretion, accept a certificate, signed by the president and chief engineer of the party of the first part, its successors or assigns, as conclusive evidence of the number of miles of completed railroad so newly constructed or acquired.

That in case the party of the first part, its successors or assigns, shall fail to pay the interest on any of the said bonds, at any time when the same may become due and payable, according to the tenor thereof, and shall continue in such default for six months after such payment has been demanded at its or their agency in the City of New York, then, and thereupon, the principal of all the bonds hereby secured shall be and become immediately due and payable, provided the said trustee gives written notice to the party of the first part, its successors or assigns, of its option to that effect, while such default continues, which notice it shall be bound to give, if required in writing to do so by the holders of twenty-five per centum of said bonds then outstanding; and that in such case or upon the principal of said bonds becoming in any other way due and payable, and remaining unpaid, in whole or in part, after demand thereof, the said trustee, or its successor in the trust, may, in its discretion, and shall, upon the request of the holders of fifty per centum of said bonds then outstanding, take, with or without entry or foreclosure, actual possession of said railroad, and of all and singular the property, things and effects hereby conveyed, and personally, or by attorney, manage and oper-

ate the same, and receive all the tolls, rents, income and profits thereof, until such time as the said bonds and interest thereon are fully paid or satisfied, and shall apply the money so received by it, first, to the expenses of the trust hereby created, the management of the said railroad and its appurtenances, and the needful repairs thereof, next, to the payment of interest overdue upon the said bonds and interest upon delayed interest, and afterwards to the payment of the principal of the said bonds. And the said trustee, or its successor in the trust, upon becoming entitled to take possession of the railroad and property aforesaid, may, in its discretion, and shall, on the written request of the holders of at least one-half of the bonds then unpaid and outstanding, cause the said premises so mortgaged to be sold, either as an entirety or in such parcels as it shall deem necessary or proper, having due regard to the interests of all parties, to the highest bidder at public auction, in the City of Austin, giving at least sixty days' notice of the time, place and terms of such sale, and of the specific property to be sold, and whether the same will be sold as an entirety or in parcels by publishing such notice in two newspapers in the City of Austin, and in one or more newspapers in the City of New York, once in each week during the said term of sixty days; and that, upon receiving the purchase money therefor, the said trustee, or its successor in the trust, shall execute to the purchaser or purchasers thereof a good and sufficient deed of conveyance in fee simple, which sale and conveyance shall forever be a bar against the party of the first part, its successors and assigns, and all persons claiming under them, of all right, estate, interest or claim in or to the premises, property, things, franchises; privileges and immunities so sold, or any part thereof, whether the said trustee is in possession thereof or not; and the receipt of the said trustee shall be a full and sufficient discharge to such purchasers; and no purchaser holding such receipt shall be liable for the proper application of the purchase money, or in any way bound

to see that the same is applied to the uses of this trust, or in any manner answerable for its loss or misapplication, or bound to inquire into the authority for making such sale. And such sale, to a purchaser in good faith, shall be valid, whether said notice is given or not, and whether default in payment has been made or not.

That the said trustee shall, after deducting from the proceeds of such sale, the cost and expenses thereof, and of the execution of this trust, and all payments for taxes, assessments and counsel fees, and its own reasonable compensation, apply so much of the proceeds as may be necessary to the payment of the principal and interest remaining unpaid upon the said bonds and coupons, together with interest upon overdue coupons, down to the time of sale, without giving preference to either principal or interest; it being the intention of this indenture that, so long as the railroad and its appurtenances shall be managed by the trustee or a receiver as a going concern, the income shall be applied to the payment of interest in preference to the principal, but that, after a sale of the railroad and its appurtenances, no such preference shall be made in the distribution of the proceeds.

That upon any sale of the said premises, whether by the trustee or under decree of the Court, the holders of the bonds hereby secured, or any of them, or the said trustee on behalf of all the bondholders, shall have a right to purchase upon equal terms with other persons; and it shall be the duty of the said trustee, if so required in writing, a reasonable time before such sale, by the holders of a majority in value of the outstanding bonds secured hereby, and upon being offered, at the same time, adequate indemnity against all liability to be incurred thereby, to make such purchase on behalf of all the bondholders, at a reasonable price, if part only of the property hereby conveyed is sold, or, in case the whole property is sold, at a price not exceeding the whole amount of principal and interest due or accruing upon the said bonds, together with the expenses of the proceedings and sale; and the

bonds secured by this mortgage shall be receivable at such sale as cash, for the amount of cash which would be payable on such bonds out of the proceeds of such sale.

That in case of the purchase of the said property or any part thereof by the trustee, the same shall be held for the benefit of all bondholders, in proportion to their respective interests in the bonds, and the property thus purchased shall be conveyed to such persons or corporations as may be designated by a majority in value of the bondholders present at a meeting of the bondholders in the City of New York, regularly called by the trustee, upon reasonable public notice published in two newspapers of that city, provided that such conveyance shall be made upon such terms as will, in the judgment of the said trustee, secure to each and every bondholder his just proportion of interest in the property purchased as aforesaid.

That it is hereby expressly agreed that in no case shall any claim, benefit or advantage to be taken by the party of the first part, its successors or assigns, of any valuation, appraisement, extension or relief laws, to prevent such entry or sale as aforesaid, and that nothing herein contained shall be construed as limiting the right of the said trustee to apply to the courts for judgment or decree of foreclosure and sale under this indenture; or for the usual relief in the course of such proceedings; and the said trustee may, in its discretion, apply to any competent court for relief by way of foreclosure or otherwise, if so advised by counsel, instead of taking possession of or selling the said property when required to do so by bondholders.

That the party of the first part, its successors and assigns, hereby covenant and agree with the party of the second part and its successor in the trust, that the proceeds of the bonds to be issued as hereinbefore mentioned, in addition to the specified number issued in exchange for income bonds then outstanding, shall be applied in good faith to the construction or purchase of additional rail-



road, and to the furnishing of additional equipment therefor.

That the party of the first part, its successors and assigns, further covenant and agree with the party of the second part and its successor in the trust, to make, execute and deliver all such further deeds, instruments and assurances as may from time to time be necessary, and as the party of the second part, or its successor in the trust, may be advised by counsel learned in the law to be necessary, for the better securing to the party of the second part, and its successor in the trust, the premises hereby conveyed and for carrying out the objects and purposes of this indenture.

That the party of the second part, and its successor in the trust, may, upon the written request of the party of the first part, its successors or assigns, convey or release any lands which it or they may cease to use for its corporate purposes, by reason of any change of location of any station-house, building, or cattle-yards, connected with its railroad, or by reason of any change of the track of said railroad; provided that, at the same time, such instruments shall be executed as will cause the lien of this mortgage to attach to all lands, tenements and hereditaments taken and used by the party of the first part, its successors or assigns, in place of the lands disused as aforesaid; and that in case of the sale of any such lands, without exchanging them for other lands, the proceeds of such sale shall be paid to the party of the second part, or its successor in the trust, and be by it applied to the purchase of bonds secured by this mortgage, which bonds, when so purchased, shall be canceled, and a certificate of the respective numbers and amounts of the bonds so canceled shall be immediately furnished by the trustee to the party of the first part, its successors or assigns.

That upon the payment of the principal and interest of all the bonds hereby secured, the estate hereby granted to the party of the second part shall be void, and the right to all the real and personal property hereby granted

and conveyed shall revert to and re-vest in the party of the first part, its successors or assigns, in law and in equity, without any acknowledgment of satisfaction, reconveyance, surrender, re-entry or other act.

That the party of the second part and its successor in the trust shall and will hold all income bonds issued under the said existing second mortgage, which may be deposited with it in exchange for bonds issued under this mortgage, in trust for the benefit of the lawful holders of the bonds issued under this mortgage, and will, if necessary, or if justice requires, enforce against the said company the income bonds so held by it and the mortgage securing the same, and secure for such bonds the full benefit of the said second mortgage on the same footing with other similar bonds not deposited with the party of the second part or its successor in the trust, except that the party of the second part and its successor in the trust shall and will accept the payment of interest upon the bonds issued under this mortgage, according to the stipulations thereof, as full satisfaction and discharge of all claims against the party of the first part, its successors and assigns, for interest upon the income bonds deposited as aforesaid, and except also that the payment of the principal of any of the bonds issued under this mortgage shall be accepted as a full satisfaction of an equivalent amount of said income bonds deposited as aforesaid, and upon such payment being made by the party of the first part, its successors or assigns, and evidenced to the party of the second part or its successor in the trust by the deposit of any bonds issued under this mortgage, paid and canceled, the party of the second part, or its successor in the trust, will cancel an equivalent amount of income bonds deposited as aforesaid, and except also that, in the event of proceedings for a foreclosure or other enforcement of the said existing second mortgage, the party of the second part or its successor in the trust will not collect or authorize the collection from the party of the first part, or its successors or assigns, of any greater

amount of interest on account of the income bonds deposited with it as aforesaid, than at the rate of six per centum per annum: it being the intention of the parties hereto that the said income bonds shall be held in trust and used only for the purpose of giving to the holders of bonds issued under this mortgage an equality of lien with the holders of other outstanding income bonds, but with a rate of interest fixed at six per centum per annum.

That in the event of all of the income bonds issued under the said existing second mortgage being deposited with the party of the second part or its successor in the trust, it will forthwith use its best diligence to procure from the trustees of the said second mortgage a satisfaction and discharge upon the record of the said second mortgage, delivering to them, if necessary for that purpose, the said income bonds duly canceled, and taking every step that may be necessary or proper for the purpose of procuring the complete discharge of the lien of the said second mortgage, to the end that this mortgage may become a lien upon all the property hereinbefore mentioned, second only to the first purchase-money mortgage executed to John S. Kennedy and Samuel Sloan, trustees, and dated the first day of November, 1879; but for this purpose, the said income bonds shall not be surrendered for cancellation, until the party of the second part is reasonably satisfied that all intervening liens have been discharged or secured to be discharged.

That the party of the second part or its successor in the trust may take such legal advice and employ such assistance as may be necessary in its judgment to the proper discharge of its duties, and shall be entitled to receive just and reasonable compensation for all duties performed by it in the discharge of this trust, and for all its reasonable expenses and disbursements, which compensation shall be paid by the party of the first part, its successors or assigns, and shall also be a lien upon and payable out of the funds coming into the hands of the party of the second part or its successor in the trust.

IN WITNESS WHEREOF, the said International and Great Northern Railroad Company, party of the first part, in pursuance of the authority conferred upon it by law, and of a resolution adopted by a vote of two-thirds of all the stock of the said company, at a meeting of its stockholders, regularly called for that purpose, and held on the thirteenth day of June, 1881, and also a resolution of its Board of Directors, has caused this indenture to be subscribed in its name by its Vice-President and Assistant Secretary, and the corporate seal of said company to be affixed thereto; and the party of the second part, for the purpose of testifying to its acceptance of the trust hereby created, has also, in pursuance of a resolution of its Board of Directors, caused this indenture to be subscribed in its name by its President and Secretary, and its corporate seal to be affixed hereto, the day and year first above written.

INTERNATIONAL AND GREAT NORTHERN  
RAILROAD COMPANY,

By

(SEAL.)

T. W. PEARSALL,  
Vice-President.

Attest:

JACOB S. WETMORE,  
Assistant Secretary.

THE FARMERS' LOAN AND TRUST CO.

By

(SEAL)

R. G. ROLSTON,  
President.

Attest:

GEO. P. FITCH,  
Secretary.

**EXHIBIT "D."**  
**IN THE UNITED STATES CIRCUIT COURT FOR**  
**THE NORTHERN DISTRICT OF TEXAS.**  
**AT DALLAS.**

The Farmers' Loan and Trust Company, Trustee,  
*Complainant,*

vs.

The International & Great Northern Railroad  
 Company, the Mercantile Trust Company and  
 Thomas J. Freeman, as Receiver of the Inter-  
 national & Great Northern Railroad Company,  
*Defendants.*

No. 2514 IN EQUITY.

On this the 20th day of April, 1908, came on to be heard and considered the verified bill of complaint in this cause, and thereupon appeared the complainant by its solicitors, The International & Great Northern Railroad Company by its solicitors, The Mercantile Trust Company by its solicitors, and Thomas J. Freeman, Receiver of the International & Great Northern Railroad Company, in person, and signified their consent to the court to this decree; and it appearing to the court that heretofore, to-wit: on the 25th day of February, 1908, in cause No. 2501, Equity, in this court, entitled The Mercantile Trust Company, trustee, Complainant, v. The International & Great Northern Railroad Company, defendant, an order was entered appointing the defendant, Thomas J. Freeman, receiver in said cause, and he has duly qualified and given bond as such receiver and the court having been fully advised in the premises and upon due deliberation being had, and all parties consenting it is now ordered, adjudged and decreed by the court;

**FIRST:** That the receivership of the said Thomas J. Freeman in said cause No. 2501, The Mercantile Trust Company, trustee, Complainant, v. The International & Great Northern Railroad Company, defendant, be, and is hereby extended to cover all of the railroads, lands, fran-

chises, property and premises embraced in and covered by the mortgage made by the International & Great Northern Railroad Company to the complainant herein as trustee dated the 15th day of June, 1881.

**SECOND:** That said Thomas J. Freeman, Receiver, be and he is hereby directed to take possession of the railroads, rolling stock, appurtenances, property and premises embraced in said mortgage, and to operate the same, and to collect and receive the income and tolls thereof, and to hold and retain the net revenues thereof in such manner and to the end that the same may be applied under such orders as the Court shall hereafter make in the premises.

**THIRD:** That said Thomas J. Freeman, Receiver, is also authorized and empowered to institute and prosecute such suits as may in his judgment be necessary for the proper protection of said property, and to likewise defend any actions which have been or may be brought seeking to establish claims, liens or demands against said property of which he is hereby appointed receiver.

**FOURTH:** It is further ordered that said Receiver be and he is hereby fully authorized and directed to take possession of the property described in the bill of complaint and exhibits filed herein, and to act as such Receiver without taking further oath of office or executing further bond. The bond heretofore executed in said cause No. 2501, The Mercantile Trust Company, trustee, Complainant, v. The International & Great Northern Railroad Company, defendant, to have the same force and effect as if executed in this cause.

**FIFTH:** It is further decreed that all orders and decrees heretofore made and entered in said cause No. 2501, The Mercantile Trust Company, trustee, Complainant, vs. The International & Great Northern Railroad Company, defendant, directing and authorizing the receiver to do and perform certain things and acts in the operation of the property, and all orders appointing masters in chancery, and all general orders in the administra-

tion of the property heretofore made and entered, shall be extended and apply in this cause as fully as if made directly herein.

**SIXTH:** It is further ordered, that all parties having in their possession any of the mortgaged property shall deliver said property to said receiver and each and every of the officers, directors, agents and employees of the International & Great Northern Railroad Company, and all other persons and corporations, are hereby restrained and enjoined, during the pendency of this action, or until the further order of this court, from interfering with, transferring, concealing or disposing of any of the property of the defendant, The International & Great Northern Railroad Company, embraced in its said mortgage of June 15, 1881, or from taking possession of, or in any manner interfering with the same, or any part thereof, or from interfering in any manner to prevent the discharge by said Receiver of his duties of the operation by him of the said property under the orders of this court.

**SEVENTH:** The right is reserved to the parties hereto to apply to the Court for any further or other instructions to said Receiver; and this Court reserves the right to make such further orders as may be proper touching the payment of all just claims and accounts for labor, supplies, services, salaries, and other liabilities of the defendant company, and to charge such claims upon the mortgaged premises as prior and preferred claims; and this order is made upon the express condition that such claims, accounts and liabilities as may by this Court be so charged and all valid debts and liabilities incurred by the Receiver in the operation of said railroad and property shall be paid by the Receiver hereby appointed out of the earnings of said railroad and property, or out of the corpus of said property, if such earnings shall be insufficient for that purpose.

A. P. McCORMICK,

Dated April 20th, 1908.

United States Circuit Judge  
Fifth Circuit.



**EXHIBIT "E."**

**IN THE CIRCUIT COURT OF THE UNITED  
STATES FOR THE NORTHERN  
DISTRICT OF TEXAS,  
AT DALLAS.**

GEORGE J. GOULD, ET AL.,

*Complainants,*

vs.

No. 2525 In Equity.

INTERNATIONAL & GREAT NORTHERN RAILROAD COMPANY,  
*Defendant.*

On this 2nd day of June, 1908, came on to be heard and considered the verified bill of complaint in cause No. 2525, wherein George J. Gould, Frank J. Gould, Edwin Gould, Helen M. Gould, Pacific Express Company, Missouri Pacific Railway Company and George J. Gould, Edwin Gould, Howard Gould and Helen M. Gould, as Executors of the Will of Jay Gould, are complainants, and International & Great Northern Railroad Company is the defendant, and thereupon appeared the complainants by their solicitor, the International & Great Northern Railroad Company by its solicitor, the Mercantile Trust Company by its solicitors, The Farmers Loan & Trust Company by its solicitors, and Thomas J. Freeman, Receiver of the International & Great Northern Railroad Company, by his attorney, and it appearing to the Court that heretofore, to-wit, on the 25th day of February, 1908, in cause No. 2501, Equity, in this Court, entitled The Mercantile Trust Company, Trustee, complainant, vs. The International & Great Northern Railroad Company, defendant, an order was entered appointing Thomas J. Freeman, Receiver in said cause, and he has duly qualified and given bond as such receiver; and thereafter, on the 20th day of April, 1908, in cause No. 2514, Equity in this court, entitled The Farmers Loan & Trust Company, Trustee, Complainant, vs. The International & Great Northern Railroad Company, The Mercantile Trust Company and Thomas J. Freeman, as Receiver of the

International & Great Northern Railroad Company, Defendants, upon the consent of all parties, an order was entered extending the receivership of Thomas J. Freeman in said cause No. 2501 to cover all of the railroads, lands, franchises, property and premises embraced in and covered by the mortgage made the basis of the Bill of Complaint in said cause No. 2514, and he has, in pursuance of said order, taken into his possession and assumed as Receiver the control of such additional property so embraced in said Order, and the Court having been fully advised in the premises, and it now appearing from the Bill of Complaint filed herein in cause No. 2525, George J. Gould et al., Complainants, against the International & Great Northern Railroad Company, defendant, that there are numerous parties holding judgments and claims against the International & Great Northern Railroad Company which are not secured by mortgage, and that said defendant is insolvent and cannot meet its obligations, and that the greater part of its property is now in the possession of said Thomas J. Freeman as Receiver in causes No. 2501 and 2514, and that the said George J. Gould and others holding judgments and claims are entitled to the appointment of a receiver of the unmortgaged assets of the defendant, if any, for their protection, but that on account of the necessity of operating said property as a whole, the rights of all parties would be best conserved by extending the present receivership to cover all of the property of the defendant of every kind and nature, rather than that there should be separate and independent receiverships, and, upon due deliberation being had,

IT IS NOW ORDERED, ADJUDGED AND DECREED:

1. That the Receivership of the said Thomas J. Freeman in cause No. 2501, The Mercantile Trust Company, Trustee, Complainant, vs. The International & Great Northern Railroad Company, Defendant, and in cause No. 2514, The Farmers Loan & Trust Company, Trustee, Complainant, vs. International & Great Northern Rail-

road Company, The Mercantile Trust Company and Thomas J. Freeman, as Receiver of the International & Great Northern Railroad Company, defendants, be and the same is hereby extended to cover all of the railroad property (real and personal), rights, privileges, franchises, choses in action, and assets of every kind and description, whether tangible or intangible, of the defendant Company, if any, which have heretofore not been covered in the orders appointing said Receiver.

2. That the said Thomas J. Freeman be and he is hereby directed to take possession of all of the said property to which his receivership is hereby extended as above recited, and to control and operate the same and to collect and receive the income and tolls thereof, and to hold and retain the net revenues thereof in such manner and to the end that the same may be applied under such orders as the Court shall hereafter make in the premises.

3. That said Thomas J. Freeman, Receiver, is also authorized and empowered to institute and prosecute such suits as may in his judgment be necessary for the proper protection of said property, and to likewise defend any actions which have been, or may be, brought seeking to establish claims, liens or demands against said property of which he is hereby appointed Receiver.

4. It is further ordered that said Receiver be and he is hereby fully authorized and directed to take possession of the property described in the bill of complaint filed in cause No. 2525, George J. Gould, et al. vs. The International & Great Northern Railroad Company, and to act as such Receiver without taking further oath of office, or executing further bond. The bond heretofore executed in cause No. 2501, The Mercantile Trust Company, Trustee, Complainant, vs. The International & Great Northern Railroad Company, Defendant, to have the same force and effect as if executed separately in said cause No. 2525.

5. It is further decreed that all orders and decrees heretofore made and entered in said cause No. 2501, The Mercantile Trust Company, Trustee, Complainant, vs. The

International & Great Northern Railroad Company, Defendant, and No. 2514, The Farmers Loan & Trust Company, Trustee, Complainant, vs. International & Great Northern Railroad Company, The Mercantile Trust Company and Thomas J. Freeman, as Receiver of The International & Great Northern Railroad Company, Defendants, directing and authorizing the Receiver to do and perform certain things and acts in the operation of the property, and all general orders in the administration of the property heretofore made and entered shall be extended and apply in this cause wherever the same are applicable as fully as if made directly in this cause.

6. It is further ordered that all parties having in their possession any of the property of any kind or nature belonging to the defendant, The International & Great Northern Railroad Company, shall deliver said property to said Receiver, and each and every of the officers, directors, agents and employees of the International & Great Northern Railroad Company, and all other persons and corporations are hereby restrained and enjoined during the pendency of this action, or until the further order of this Court, from interfering with, transferring, concealing or disposing of any of the property of the defendant, The International & Great Northern Railroad Company, of any kind or character whatever, or from taking possession of, or in any way interfering with the same or any part thereof, or from interfering in any manner to prevent the discharge by said Receiver of his duties, or the operation by him of said property under the orders of this Court.

7. The right is reserved to the parties hereto to apply to the Court for any further or other instructions to said Receiver, and this Court reserves the right to make such further orders as may be proper touching the payment of all just claims and accounts for labor, supplies, services, salaries, and other liabilities of the defendant company and to charge such claims upon the mortgaged or other premises as prior and preferred claims; and this order is made upon the express condition that such claims, ac-

counts and liabilities as may be by this Court so charged, and all valid debts and liabilities incurred by the Receiver in the operation of said Railroad and property shall be paid by the Receiver hereby appointed out of the earnings of said railroad and property, or out of the corpus of said Company, if such earnings shall be insufficient for that purpose.

A. P. McCORMICK,

*United States Circuit Judge, Fifth Circuit.*

Dated June 2nd, 1908.

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**EXHIBIT "F."**

**IN THE CIRCUIT COURT OF THE UNITED  
STATES FOR THE NORTHERN  
DISTRICT OF TEXAS,  
AT DALLAS.**

CONSOLIDATED.

THE MERCANTILE TRUST COMPANY, TRUSTEE,

vs.

*Complainants,* No. 2501.

THE INTERNATIONAL & GREAT NORTHERN RAILROAD  
COMPANY,

*Defendant.*

THE FARMERS LOAN AND TRUST COMPANY, TRUSTEE,

vs.

*Complainant,* No. 2514.

THE INTERNATIONAL & GREAT NORTHERN RAILROAD  
COMPANY,

THE MERCANTILE TRUST COMPANY, and

THOMAS J. FREEMAN, as Receiver of The International  
& Great Northern Railroad Company,  
*Defendants.*

GEORGE J. GOULD, ET ALS.,

vs.

*Complainant,* No. 2525.

THE INTERNATIONAL & GREAT NORTHERN RAILROAD  
COMPANY,

*Defendant.*

Be it remembered that these causes came on this day to

be heard upon the motions of Thomas J. Freeman, Receiver herein, at this term, to consolidate the above styled and numbered causes, and said motion having been considered by the Court and the Court having been advised of the premises, and all parties to the aforesaid causes appearing in open court, by and through their attorneys, and no objection being made thereto, the Court orders, adjudges and decrees as follows:

1. That said causes, to-wit: No. 2501, The Mercantile Trust Company, Trustee, Complainant, vs. The International & Great Northern Railroad Company, Defendant, No. 2514, The Farmers Loan & Trust Company, Trustee, Complainant, vs. The International & Great Northern Railroad Company, the Mercantile Trust Company and Thomas J. Freeman, as Receiver of the International & Great Northern Railroad Company, defendants, and No. 2525, George J. Gould, et als., complainants, vs. The International & Great Northern Railroad Company, defendants, be, and the same are, hereby consolidated under the following number and style, to-wit:

CONSOLIDATED CAUSE.

THE MERCANTILE TRUST COMPANY, TRUSTEE,  
THE FARMERS LOAN AND TRUST COMPANY, TRUSTEE,  
GEORGE J. GOULD, ET ALS.,

*Complainants,*

vs.

No. 2501.

THE INTERNATIONAL & GREAT NORTHERN RAILROAD  
COMPANY,

*Defendant.*

And it is further ordered that the bills filed in said causes shall stand as bills in said consolidated cause, and that all of said parties complainants and defendants shall retain their respective status as parties fixed by law, and the pleadings of said parties heretofore filed and as they may be amended from time to time or changed by the

order or orders of this Court; and that in case any one or more of the bills filed by the complainants in said causes hereby consolidated be finally dismissed, the remaining bill or bills shall continue to stand as the bill in such consolidated cause.

2. It is further decreed that all orders and decrees heretofore made and entered in said cause No. 2501, The Mercantile Trust Company, Trustee, Complainant, vs. The International & Great Northern Railroad Company, Defendant, and No. 2514, The Farmers Loan & Trust Company, trustee, Complainant, vs. The International & Great Northern Railroad Company, the Mercantile Trust Company, and Thomas J. Freeman, as Receiver of The International & Great Northern Railroad Company, Defendants, directing and authorizing the Receiver to do and perform certain things and acts in the operation of the property and all orders, appointing the Master in Chancery and all general orders in the administration of the property heretofore made and entered shall be extended and apply in said causes as the same are hereby consolidated as fully as if made directly in each of said causes; and likewise all orders and decrees heretofore made and entered in cause No. 2525, George J. Gould, et als., complainants, vs. The International & Great Northern Railroad Company, Defendant, shall be extended and applied in the aforesaid consolidated cause as fully as if made directly in the same.

June 2, 1908.

A. P. McCORMICK,  
*Judge.*



**EXHIBIT "G."****IN THE UNITED STATES CIRCUIT COURT FOR  
THE NORTHERN DISTRICT OF TEXAS.**

**THE MERCANTILE TRUST COMPANY, Trustee,  
THE FARMERS LOAN & TRUST COMPANY, Trustee,  
GEORGE J. GOULD, ET AL.,**

*Complainants,*

**No. 2501.      VERSUS      CONSOLIDATED CAUSE.  
INTERNATIONAL & GREAT NORTHERN RAILROAD  
COMPANY,**

*Defendant.*

*To the Honorable the Judges of the Circuit Court of the  
United States for the Northern District of Texas,  
Sitting in Equity:*

Your Orator, The Farmers Loan & Trust Company, complainant in the original bill of complaint filed on or about the 20th day of April, 1908, in Equity Cause No. 2514, which was thereafter consolidated with certain other causes into the present consolidated cause under the above number and style, by leave of Court first had and obtained, brings and files this its supplemental bill of complaint, in addition to its said original bill of complaint, against said International and Great Northern Railroad Company, The Mercantile Trust Company and Thomas J. Freeman, as Receiver of the International and Great Northern Railroad Company, and thereupon complains and says:

I. That heretofore and on or about the twentieth day of April, 1908, your Orator filed its said original bill of complaint in said cause No. 2514 against the said defendants, praying among other things for the foreclosure of the mortgage and deed of trust made by the said defendant International and Great Northern Railroad Company to your Orator and bearing date the fifteenth day of June, 1881. Your Orator now refers to its said original bill and prays that all of the allegations and descriptions

therein contained may be taken as herein repeated in full.

II. That, as in and by said original bill of complaint alleged, the said defendant, International and Great Northern Railroad Company, under and in accordance with the provisions of said mortgage and deed of trust, and due corporate action having been had, under its corporate seal, made, executed and delivered, and your Orator as Trustee under said mortgage and deed of trust, in accordance with the provisions thereof, and in the manner therein provided, certified in the form therein set forth ten thousand one hundred and forty-one (10,141) of the bonds in the said original bill of complaint and in said mortgage and deed of trust described, each for the sum of One thousand dollars (\$1,000), and five hundred (500) of said bonds, each for the sum of Five hundred dollars (\$500), amounting in the aggregate to the principal sum of Ten million, three hundred and ninety-one thousand dollars (\$10,391,000), all of which bonds, as your orator is informed and believes, have been duly issued and negotiated for value by the said defendant International and Great Northern Railroad Company, and are now valid outstanding obligations of the said International and Great Northern Railroad Company, entitled to the lien and security of said mortgage and deed of trust; so that on the first day of March, 1908, and for some time prior thereto, there had been issued and were outstanding and are now outstanding, under said mortgage and deed of trust and entitled to the lien and security thereof, bonds amounting in the aggregate to the principal sum of Ten million, three hundred and ninety-one thousand dollars (\$10,391,000).

III. That, as in said original bill of complaint also alleged, it was among other things in and by said mortgage and deed of trust provided, that in case the International and Great Northern Railroad Company, its successors or assigns, should fail to pay the interest on any of said bonds at any time when the same might become due and payable, according to the tenor thereof, and should con-

tinue in such default for six months after such payment had been demanded at its or their agency in the City of New York, then and thereupon the principal of all of the bonds thereby secured should be and become immediately due and payable, provided your Orator as such Trustee should give written notice to the said International and Great Northern Railroad Company, its successors or assigns, of its option to that effect while such default continued.

IV. That, as in and by said original bill of complaint also alleged, the said International and Great Northern Railroad Company, as your Orator is informed and believes, failed to pay the interest amounting to the sum of Two hundred and fifty-nine thousand, seven hundred and seventy-five dollars (\$259,775) which became due and payable on the first day of March, 1908, on all of the said bonds so issued and outstanding under said mortgage and deed of trust, as aforesaid, at the time when the same became due and payable, according to the tenor thereof, although demand for the payment of some of such interest was duly made at the agency of the said International and Great Northern Railroad Company in the City of New York. And your Orator is informed and believes, and therefore alleges, that the said International and Great Northern Railroad Company has continued in such default for more than six months after such payment was demanded as aforesaid, and still continues in such default, and that all of such default still continues, and such defaulted interest still remains unpaid. Your Orator further alleges that since the filing of its said original bill of complaint, and after the lapse of the said six months, and during the continuance of such default, to-wit, on the 14th day of May, 1909, your Orator as such Trustee gave written notice to the said International and Great Northern Railroad Company, of its option that the principal of all of the said bonds secured by said mortgage and deed of trust should be and become immediately due and payable, and declared that the same was and had become immedi-

ately due and payable. And your Orator has elected to declare and has declared, and hereby does declare, due and payable the whole principal sum of the said bonds so issued and outstanding under the said mortgage and deed of trust as aforesaid, and the same is now due and payable and unpaid.

V. That, as in and by said original bill of complaint also alleged, on or about the twenty-seventh day of January, 1892, by an agreement between the said International and Great Northern Railroad Company and (among others) the holders of all of said bonds then outstanding under said mortgage and deed of trust, the interest upon said bonds was reduced to four and one-half per cent. per annum for a period of six years from and after September 1st, 1891, such reduction to extend to and include the interest payable on September 1st, 1897; and it was further agreed that after September 1st, 1897, and until the maturity of said bonds, the same should bear interest at the rate of five per cent. per annum; provided, however, that in case of default continued for the period of ninety days in the payment of any coupons upon said bonds unmatured at the date of said agreement, the original rate of interest, namely six per cent., should be restored, and such coupons should be collectible and enforceable at such original rate of interest. All the bonds thereafter issued under said mortgage and deed of trust by the said International and Great Northern Railroad Company bore interest in accordance with the provisions of the said agreement.

VI. That the said default by the said International and Great Northern Railroad Company in the payment of the interest upon the said bonds which fell due on the first of March, 1908, was a default upon coupons upon said bonds unmatured at the date of said agreement of January 27th, 1892, and that said default has continued for more than the period of ninety days; that said period of ninety days came to an end since the filing of your Orator's said original bill of complaint, and the said original

rate of interest, namely six per cent., has been restored as aforesaid, and there is now in default upon the said coupons which fell due March 1st, 1908, in addition to the said sum of Two hundred and fifty-nine thousand seven hundred and seventy-five dollars so defaulted as in said original bill set forth, the sum of Fifty-one thousand nine hundred and fifty-five dollars.

VII. That, as your Orator is informed and believes, the said International and Great Northern Railroad Company, since the filing of your Orator's said original bill of complaint, has failed to pay a further installment of interest amounting to the sum of Three hundred and eleven thousand seven hundred and thirty dollars on all the said bonds so issued and outstanding under the said mortgage and deed of trust of June 15th, 1881, as aforesaid, which became due and payable on the first day of September, 1908, although demand for the payment of some of such interest was duly made at its agency in the City of New York and said sum still continues in default, and is now due and payable as interest upon said bonds.

VIII. That, as your Orator is informed and believes the said International & Great Northern Railroad Company, since the filing of your Orator's said original bill of complaint, has failed to pay a further installment of interest amounting to the sum of Three hundred and eleven thousand seven hundred and thirty dollars on all the said bonds so issued and outstanding under said mortgage and deed of trust of June 15th, 1881, as aforesaid, which became due and payable on the first day of March, 1909, although demand for the payment of some of such interest was duly made at its agency in the City of New York, and said sum still continues in default, and is now due and payable as interest upon said bonds.

IX. That by reason of the matters and things hereinbefore alleged there is due to your Orator as Trustee under the said mortgage and deed of trust, in addition to the amount alleged to be due in the said original bill of complaint, the principal of all of the said bonds so issued and outstanding as aforesaid, to-wit, Ten million, three hun-

dred and ninety-one thousand dollars; the sum of Fifty-one thousand nine hundred and fifty-five dollars upon the said coupon interest which fell due on said bonds on the first day of March, 1908, as aforesaid, with interest thereon from the said first day of March, 1908, the sum of Three hundred and eleven thousand seven hundred and thirty dollars, the amount of said coupon interest which fell due on the said bonds on the first day of September, 1908, as aforesaid, with interest thereon from the said first day of September, 1908; and the sum of Three hundred and eleven thousand seven hundred and thirty dollars, the amount of said coupon interest which fell due on said bonds on the first day of March, 1909, as aforesaid, with interest thereon from the said first day of March, 1909; together with interest upon the said principal sum from the said first day of March, 1909.

WHEREFORE, your Orator prays that it may have the benefit of the proceedings taken under the said original bill and that this bill be taken as supplemental thereto, and that it may have the same relief as in said original bill already prayed, and, in addition thereto, prays that an account may be taken of the amounts due upon the bonds secured by the said mortgage and deed of trust and now outstanding with interest thereon; that the said International and Great Northern Railroad Company may be decreed to pay the amounts so found to be due upon said bonds; that in default thereof all said mortgaged property and franchises of the said International and Great Northern Railroad Company may be sold under a decree of this Court, and according to law and the practice of this Court to satisfy the amounts so found due, and that your Orator may have all the relief prayed for in its said original bill of complaint in consideration of the matters herein alleged as well as those alleged in its said original bill of complaint, and that the defendants and each of them may be directed to answer the matters alleged in this its amended and supplemental bill, and that your Orator may have such other and further relief in the premises as may be just.

And your Orator will ever pray, etc.,

(SEAL) THE FARMERS LOAN & TRUST COMPANY,  
By E. S. MARSTON, *President.*

Attest: A. V. HEELY,  
*Secretary.*

TURNER, ROLSTON & HORAN,  
BAKER, BOTTS, PARKER & GARWOOD,  
*Solicitors for Complainant, The Farmers  
Loan and Trust Company.*

JAMES F. HORAN,  
JAS. A. BAKER, JR.,  
*of Counsel.*

# EXHIBIT "H."

IN THE UNITED STATES CIRCUIT COURT FOR  
THE NORTHERN DISTRICT OF TEXAS.

THE MERCANTILE TRUST COMPANY, Trustee,  
THE FARMERS LOAN & TRUST COMPANY, Trustee,  
GEORGE J. GOULD, ET AL.,

*Complainants,*

VERSUS

EQUITY CAUSE No. 2501.

INTERNATIONAL & GREAT NORTHERN RAILROAD  
COMPANY,

*Defendant.*

THE FARMERS LOAN & TRUST COMPANY, Trustee,  
*Complainant,*

VERSUS

EQUITY CAUSE No. 2514.

INTERNATIONAL & GREAT NORTHERN RAILROAD  
COMPANY, THE MERCANTILE TRUST COM-  
PANY and THOMAS J. FREEMAN, as Re-  
ceiver of the International & Great North-  
ern Railroad Company,

*Defendants.*

DECREE OF FORECLOSURE AND SALE UNDER  
MORTGAGE OF INTERNATIONAL AND GREAT



**NORTHERN RAILROAD COMPANY TO THE FARMERS LOAN AND TRUST COMPANY, TRUSTEE, DATED JUNE 15th, 1881.**

These causes came on to be heard at this term upon the pleadings and proof under the bill of complaint filed in said Equity Cause No. 2514, by The Farmers' Loan & Trust Company, Trustee, on or about April 20th, 1908, and the supplemental bill of complaint of said The Farmers' Loan and Trust Company, Trustee, filed herein on or about June 7th, 1909, and upon all the papers on file, and was argued by counsel; and upon consideration thereof, it was, on motion of Geller, Rolston & Horan and Baker, Botts, Parker & Garwood, solicitors for the complainant, The Farmers' Loan and Trust Company, Trustee, all the other parties to said Equity Cause No. 2514 appearing by counsel and no objection being made.

**ORDERED, ADJUDGED AND DECREED**, as follows, to-wit:

I.—That all and singular the material allegations in the said bill and supplemental bill of complaint of The Farmers' Loan and Trust Company, Trustee, are true.

II.—That on or about the first day of November, 1879, the defendant International and Great Northern Railroad Company made its two certain mortgages or deeds of trust dated that day as follows:

1. A mortgage or deed of trust known as said defendant Railroad Company's First Mortgage, whereby said Railroad Company conveyed to John S. Kennedy and Samuel Sloan, Trustees, all and singular its lands, tenements and hereditaments then owned or thereafter to be acquired, including all its railroads, franchises, income, issues and profits, in trust, for the owners and holders of bonds to be issued thereunder, bearing interest at the rate of six per centum per annum, payable semi-annually on the first days of May and November in each year, and to become due and payable on the first day of November,

in the year 1919, a large number of which bonds have been issued and are now outstanding.

2. A mortgage or deed of trust made to Samuel Thorne, William Walter Phelps and John S. Barnes, as Trustees, to secure an issue of said Railroad Company's income bonds, all of which bonds have been duly retired, and which said mortgage has been duly cancelled and satisfied of record.

III.—That on or about the 15th day of June, 1881, the said defendant International and Great Northern Railroad Company did execute its certain other mortgage or deed of trust, known as its Second Mortgage, dated that day, to the Complainant, The Farmers' Loan and Trust Company, as Trustee, and therein and thereby conveyed and transferred to said complainant, as Trustee, its railroads, property and franchises, as alleged in the said bill of complaint, to secure the issue of its bonds described in the said bill of complaint. The said Second Mortgage was made and is subject to said mortgage known as said defendant Railroad Company's First Mortgage, dated November 1st, 1879.

IV.—That on or about the 1st day of March, 1892, the said defendant International & Great Northern Railroad Company made its certain other mortgage or deed of trust dated that day, known as the said defendant Railroad Company's Third Mortgage, by which it conveyed to the defendant The Mercantile Trust Company, as Trustee, all and singular its lands, tenements and hereditaments then owned or thereafter to be acquired, including all its railroads, franchises, income, issues and profits, to secure an issue of \$3,000,000 of its Third Mortgage Four Per Cent. bonds, under which mortgage there have been issued and are outstanding bonds and bond scrip aggregating a face value of \$2,966,052.50. The said Third Mortgage dated March 1st, 1892, was expressly made and is subject to the said First Mortgage of said defendant Railroad Company dated November 1st, 1879, and to the said Second Mortgage of said defendant Railroad Com-

pany dated June 15th, 1881, and to all of the provisions of said last-mentioned mortgages, and to the powers, rights and privileges as well as the covenants, duties and obligations of the said defendant Railroad Company therein respectively set forth and contained.

V.—That the said mortgage or deed of trust dated June 15th, 1881, being the mortgage or deed of trust set forth and described in the said bill of complaint and supplemental bill of complaint so filed by the said The Farmers' Loan and Trust Company, Trustee, as aforesaid, is a valid and subsisting mortgage and the proper act and deed of said defendant International and Great Northern Railroad Company, duly authorized and made, executed, delivered and recorded in all respects in conformity with law, and a valid conveyance for the purposes therein specified; that the said mortgage constitutes a valid conveyance of, and a valid and subsisting lien upon, the following property, premises and franchises, and of and upon all muniments of title thereto and evidences of ownership thereof, to-wit:

All and singular the lands, tenements and hereditaments of the defendant International & Great Northern Railroad Company whether owned at the date of the execution of the said Second Mortgage, namely, on the 15th day of June, 1881, or thereafter acquired by it, including its lines of railroad in the State of Texas, extending from the town of Longview, in the County of Gregg, in said State, through said county, and through the Counties of Rusk, Smith, Cherokee, Anderson, Leon, Robertson, Milam, Williamson, Travis, Hays, Comal, Bexar, Medina, Frio, LaSalle, Encinal and Webb to Laredo, in said last mentioned county; and from the town of Mineola in Wood County to Troupe in Smith County; and from the City of Palestine in Anderson County, through the Counties of Houston, Trinity, Walker and Montgomery to Houston in Harris County; and from the town of Spring in Harris County, through the counties of Montgomery, Waller, Grimes, Brazos, Robertson, Falls, McLennan, Limestone,

Hill, Navarro, Ellis and Johnson to the City of Fort Worth, Tarrant County, with branches and branch lines from the town of Overton to the town of Henderson, in Rusk County, from the town of Round Rock to Georgetown, in Williamson County, from the town of Phelps to the town of Huntsville in Walker County; from the City of Houston in Harris County to the town of Columbia in Brazoria County; from Navasota in Grimes County to Madisonville in Madison County; from Calvert Junction to Calvert, and from Waco Junction to East Waco; also the railway and railway tracks and property appurtenant thereto, and certain tracts of land in and adjacent to the City of Houston in Harris County, State of Texas, known as the Houston Belt Terminals; a total distance of about eleven hundred and six miles of completed railroad, all in the State of Texas; also the trackage rights of the said International & Great Northern Railroad Company from Houston in Harris County to Galveston in Galveston County in said State of Texas over the railroad of the Galveston, Houston & Henderson Railroad Company of 1882 accorded to it by an agreement between said last named railroad company and said International and Great Northern Railroad Company, dated November 19th, 1895; also all and singular the said International and Great Northern Railroad Company's railroad, tracks, rights of way, main lines, branch lines, superstructures, depots, depot grounds, station houses, engine houses, car houses, freight houses, wood houses, sheds, watering places, workshops, machine shops, bridges, viaducts, culverts, fences and fixtures, together with all its leases, leasehold-interests, leased or hired lands, leased or hired railroads, and all its locomotives, tenders, cars, carriages, coaches, trucks and other rolling stock, its machinery, tools, weighing scales, turn-tables, rails, wood, coal, oil, fuel, equipment, furniture and material of every name, nature and description, together with all its corporate rights, privileges, immunities and franchises, whether held at the time of the execution of the said Second Mort-

gage, namely, on June 15th, 1881, or thereafter acquired (including the franchise to be a corporation), and all the tolls, fares, freights, rents, income, issues and profits thereof, and all the reversion and reversions, remainder and remainders thereof, as well as all property purchased or held by the Receiver herein, including any balance of cash, credits and income which may remain in his hands after application thereof, as herein provided or as has been or may hereafter be directed by the Court herein, to the payment of receivership obligations and charges, and to the payment of claims which may be allowed by the Court herein against the same with priority over said Second Mortgage dated June 15th, 1881; excepting, however, all land grants, lands, land certificates, town lots, and town sites, owned or controlled by the said International & Great Northern Railroad Company, at the date of the execution of said second mortgage, namely, on June 15th, 1881, or any time prior to said date, which were not, on the first day of November, 1879, or thereafter up to the said 15th day of June, 1881, actually occupied and in use by the said Railroad Company and necessary to the occupation and maintenance of its lines of railroad; and excepting further any portions of said premises and property which may have been released from the lien and operation of said mortgage dated June 15th, 1881, and the releases for which have been duly filed for record in the proper county.

VI.—That the lien of the said mortgage dated June 15th, 1881, upon the foregoing property is prior and superior to every other lien in favor of any party to this cause, and is subject and subordinate only to the lien of the said First Mortgage dated November 1st, 1879, except as hereinafter stated and provided.

VII.—That said defendant International and Great Northern Railroad Company, under and in accordance with the provisions of the said mortgage or deed of trust dated June 15th, 1881, duly made, executed and delivered, and the Complainant The Farmers Loan and Trust Com-

pany, as Trustee, in the manner therein provided duly certified and delivered, and the said defendant Railroad Company duly issued and negotiated for value, ten million, three hundred and ninety-one thousand dollars (\$10,391,000), face value, of the bonds mentioned and described in said mortgage or deed of trust, in and by each of which bonds said defendant Railroad Company promised to pay to the bearer, or, if registered, to the registered holder thereof, on the first day of September, 1909, the principal sum therein named, in United States gold coin, and interest thereon in the meantime at the rate of six (6) per centum per annum from the first day of March, 1881, payable in like gold coin, semi-annually, on the first days of March and September in each year. All of said \$10,391,000 of bonds were at the time of the filing of the said bill of complaint and now are, outstanding and valid obligations of the said defendant Railroad Company entitled to the lien and security of the said mortgage or deed of trust dated June 15th, 1881.

VIII.—That on or about the twenty-seventh day of January, 1892, by an agreement between the said defendant Railroad Company and (among others) the holders of all said bonds then outstanding under the said mortgage or deed of trust dated June 15th, 1881, the interest upon said bonds was reduced to four and one-half per centum per annum for the period of six years from and after September 1st, 1891, such reduction to extend to and include the interest payable on September 1st, 1897, and it was further agreed that after September 1st, 1897, and until the maturity of said bonds, the same should bear interest at the rate of five per centum per annum; provided, however, that in case of default continued for the period of ninety days in the payment of any coupons upon said bonds unmatured at the date of said agreement, the original rate of interest, namely, six per centum per annum, should be restored and such coupons should be collectible and enforceable at such original rate of interest. All the said bonds outstanding at the time of the



making of said agreement, as well as those thereafter issued under said mortgage or deed of trust by the said defendant Railroad Company, bore interest in accordance with the provisions of the said agreement.

IX.—That on the first day of March, 1908, there became due and payable upon all the said \$10,391,000 face value of said bonds so issued and outstanding under said mortgage or deed of trust dated June 15th, 1881, as aforesaid, the semi-annual interest and coupons thereon maturing on that day and amounting, at the rate of five per centum per annum, to the sum of \$259,775; that demand was duly made for the payment of some of such interest, but said defendant Railroad Company made default in the payment of all such interest, and the whole amount thereof has ever since the said first day of March, 1908, remained, and still remains, due and unpaid; that the said default was a default upon coupons upon said bonds unmatured at the date of said agreement of January 27th, 1892; that said default has continued for more than a period of ninety days and had so continued prior to the filing of the said supplemental bill of complaint herein, and the said original rate of interest, namely, six per centum per annum, has been restored, and there is now in default upon the said interest and coupons which fell due on March 1st, 1908, in addition to the said sum of \$259,775, the sum of \$51,955, making a total of \$311,730.

That there became due upon all the said \$10,391,000 face value of said bonds so issued and outstanding under said mortgage or deed of trust dated June 15th, 1881, as aforesaid, the semi-annual installments and coupons thereon maturing, respectively, on the first day of September, 1908, and the first day of March, 1909; that the semi-annual installments and coupons maturing on said bonds on each of said dates respectively amounted to the sum of \$311,730; that in each instance demand was duly made for the payment of some of said interest and coupons, but said defendant Railroad Company made default in the payment of all said interest installments and cou-



pons and the whole amount thereof has ever since the same fell due respectively as aforesaid remained, and still remains, due and unpaid.

The payment of the interest which fell due on some of said bonds on March 1st, 1908, having been duly demanded at the agency of the said defendant Railroad Company in the City of New York, and the default in the payment of such interest having continued for six months after such payment had been so demanded as aforesaid, the complainant, The Farmers Loan & Trust Company, Trustee, after the lapse of said six months, and during the continuance of such default, and prior to the first day of September, 1909, to-wit, on the 14th day of May, 1909, duly gave written notice to the said defendant Railroad Company of its option that the principal of all the said \$10,391,000 face value of said bonds should be and become immediately due and payable, and declared and duly elected that the said principal sum was and had become immediately due and payable, and thereupon the whole of said principal sum did become, and the same is now, due and payable and in default.

That in addition to the foregoing defaults upon the said bonds so issued and outstanding under the said mortgage dated June 15th, 1881, as aforesaid, the said defendant Railroad Company has defaulted in the payment of the semi-annual interest which fell due upon some of said bonds upon the following dates, the amounts of such defaults respectively being set forth opposite the said respective dates:

On March 1st, 1904.....	\$ 75.00
On September 1st, 1904.....	75.00
On March 1st, 1905.....	75.00
On September 1st, 1905.....	125.00
On March 1st, 1906.....	75.00
On September 1st, 1906.....	75.00
On March 1st, 1907.....	75.00
On September 1st, 1907.....	637.50

That each of said defaults has continued from the date

upon which the same was made as aforesaid to the date of this decree, and still continues, and that all of said defaulted interest is due and unpaid; so that the following sums are now due and payable at the date of this decree for principal and coupons and interest upon the said bonds so issued and outstanding under the said mortgage dated June 15th, 1881, as aforesaid, viz:

1. The amount of \$75.00 for coupons due March 1st, 1904, with interest on the amount of said coupons at the rate of six per centum per annum;
2. The amount of \$75.00 for coupons due September 1st, 1904, with interest on the amount of said coupons at the rate of six per centum per annum;
3. The amount of \$75.00 for coupons due March 1st, 1905, with interest on the amount of said coupons at the rate of six per centum per annum;
4. The amount of \$125.00 for coupons due September 1st, 1905, with interest on the amount of said coupons at the rate of six per centum per annum;
5. The amount of \$75.00 for coupons due March 1st, 1906, with interest on the amount of said coupons at the rate of six per centum per annum;
6. The amount of \$75.00 for coupons due September 1st, 1906, with interest on the amount of said coupons at the rate of six per centum per annum;
7. The amount of \$75.00 for coupons due March 1st, 1907, with interest on the amount of said coupons at the rate of six per centum per annum;
8. The amount of \$637.50 for coupons due September 1st, 1907, with interest on the amount of said coupons at the rate of six per centum per annum;
9. The amount of \$311,730 for coupons due March 1st, 1908, with interest on the amount of said coupons at the rate of six per centum per annum;
10. The amount of \$311,730 for coupons due September 1st, 1908, with interest on the amount of said coupons at the rate of six per centum per annum;
11. The amount of \$311,730 for coupons due March

- 1st, 1909, with interest on the amount of said coupons at the rate of six per centum per annum;
12. The amount of \$10,391,000 for the principal of said bonds, with interest at the rate of six per centum per annum from the first day of March, 1909;

So that the entire sum due for principal and interest, and interest on the unpaid coupons, up to the day of this decree, is twelve million, one hundred and sixty-five thousand, five hundred and forty-five 60-100 dollars (\$12,-165,545.60).

X.—That the property and premises above described are so situated that they cannot be sold except as an entirety, due regard being had to the best interests of those interested in the same; and further that the said defendant Railroad Company is unable to pay the said sum so found to be due.

XI.—IT WAS FURTHER ORDERED, ADJUDGED AND DECREED that the defendant International and Great Northern Railroad Company pay, or cause to be paid, within ten days after the entry of this decree to the complainant, The Farmers' Loan & Trust Company, as Trustee, for the use and benefit of the holders of the said bonds secured by the said mortgage dated June 15th, 1881, and the respective coupons for interest appertaining thereto, the sum hereinbefore found due upon said bonds and coupons, together with interest thereon at the rate of six per centum per annum from the date of this decree. In case the said amount shall be paid as herein decreed, then any party hereto may apply to this Court for such further relief and for such further directions as may be just and equitable.

XII.—IT WAS FURTHER ORDERED, ADJUDGED AND DECREED that in default of payment of the said sum as aforesaid by the defendant Railroad Company, or by any one claiming under it or for its account, or by the other parties defendants in the said Equity Cause No. 2514, or some of them, the said mortgage dated June 15th,

1881, shall be foreclosed and the said mortgaged premises, property and franchises, as well as all the property purchased or held by the Receiver herein, including any balance of cash, credits and income which may remain in his hands after application thereof, as herein provided, or has been or may hereafter be directed by the Court herein, to the payment of receivership obligations and charges and to the payment of claims which may be allowed by the Court herein against the same with priority over said Second Mortgage dated June 15th, 1881, shall be sold as hereinafter directed, and all the right, title, estate and equity of redemption of the defendant Railroad Company and of each and all of the parties to the said Equity Cause No. 2514, and of all persons claiming or to claim under them or either of them, of, in or to the said premises, property and franchises and every part and parcel thereof shall be forever barred and foreclosed, and that said sale shall be made upon the terms and in the manner following, to-wit:

The said premises and property, real, personal and mixed, rights, privileges, immunities and franchises, wherever situated, shall be sold as an entirety and without valuation, appraisement, redemption or extension, at public auction to the highest bidder therefor, at twelve o'clock noon, at the passenger depot of the said defendant, International and Great Northern Railroad Company, in the City of Palestine, in the County of Anderson, in the State of Texas, on a day to be named by the Master Commissioner herein appointed in his notice of sale; that before making said sale the said Master Commissioner shall publish a notice thereof once a week for at least four weeks prior to such sale in the following newspapers, namely: in one newspaper in the City of New York, in the County of New York, in the State of New York; in one newspaper in the City of Palestine, in the County of Anderson, in the State of Texas; in one newspaper in the City of Houston, in the County of Harris, in the State of Texas; in one newspaper in the City of Aus-

tin, in the County of Travis, in the State of Texas; and in one newspaper in the City of Dallas, in the County of Dallas, in the State of Texas; the particular newspaper to be selected by the Master Commissioner herein appointed, and to be newspapers printed, regularly issued and having a general circulation in said places respectively; and further, that the Master Commissioner, personally, or by some person to be designated by him to act in his name and by his authority, may adjourn the sale from time to time without further advertisement, but only on request of the said complainant The Farmers' Loan and Trust Company, Trustee, or its solicitors, or by order of the Court, or a Judge thereof.

The Master Commissioner shall receive no bid from any person until such person shall have deposited with him the sum of \$100,000. Such deposit shall be returned in case the depositor's bid be not accepted; but if his bid be accepted, then such deposit shall be held by such Master Commissioner on account of the purchase price.

The purchaser, when the property is struck down to him, shall at once pay the Master Commissioner, on account of his purchase, a sufficient sum to make up with his deposit ten per centum of his accepted bid. The deposit required before bidding shall be paid in United States currency or in such certified draft, certificate or cheque as may be satisfactory to the Master Commissioner, or in a certificate of The Farmers' Loan and Trust Company duly made payable to the order of said Master Commissioner. Said further payment shall be made either as aforesaid, or in the bonds and coupons secured by the said mortgage dated June 15th, 1881, taken at a valuation equal to the amount said bonds and coupons would be entitled to receive in cash out of the amount bid for said property. The certificate of the said The Farmers Loan and Trust Company that it holds bonds and coupons as therein described subject to the order of the party named therein, such certificate being by him transferred to the order of said Master Commissioner, shall be

accepted in lieu of such bonds and coupons. Should such further payment be not made, the property shall be forthwith resold, without further advertisement, the Court reserving the right to consider such resale made on account of said successful bidder or as an original sale; and in case of such resale, the deposit received from the successful bidder shall be applied on account of the purchase price. Such further portions of the purchase price shall be paid in money as the Court may from time to time direct, the Court reserving the right to resell the premises and property herein directed to be sold upon the failure of the purchaser or purchasers, his, its or their successors or assigns, to comply with any order of the Court in that regard, and in case of any such resale or the failure of the purchaser or purchasers, his, its or their assigns, to comply with the terms of the bid or the orders of the Court relative to such additional payments, the said money, bonds and coupons so paid in as aforesaid shall be forfeited as liquidated damages and shall be applied towards the expenses of any resale ordered, or towards making good any deficiency or loss in case the property at such resale shall bring less than at the prior sale. The balance of the purchase price may be paid either in money or in bonds or overdue coupons secured by the said mortgage dated June 15th, 1881, each said bond and coupon being received for such sum as the holder thereof would be entitled to receive under the distribution herein ordered and according to the priority herein adjudged. The certificate of the said The Farmers' Loan and Trust Company that it holds bonds and coupons as therein described subject to the order of the party named therein, said certificate being by him transferred to the order of said Master Commissioner, shall be accepted in lieu of such bonds and coupons.

Any party to this cause and any holder or holders of any of the bonds and coupons so outstanding under said mortgage dated June 15th, 1881, as aforesaid, may bid and purchase at such sale.

The said premises and property are subject to, and the Master Commissioner shall offer the same for sale subject to, the said mortgage dated November 1st, 1879, made by said defendant Railroad Company to John S. Kennedy and Samuel Sloan, as Trustees, and known as said Railroad Company's First Mortgage; and subject also to any unpaid indebtedness or liability contracted or incurred by said defendant Railroad Company in the operation of its railroad which the Court may hereafter order or decree herein to be prior or superior to the lien of the said mortgage dated June 15th, 1881, except such as shall be paid or satisfied out of the income of the property in the hands of the receiver herein under orders of the Court entered or to be entered herein; and subject also to such debts, claims, liens and demands of whatsoever nature heretofore incurred or created or which may hereafter be incurred or created by the Receiver herein under orders of the Court heretofore or hereafter entered herein, and which have not been or shall not hereafter be paid by said Receiver under orders of the Court heretofore or hereafter entered herein, or other parties in interest herein; or out of the proceeds of such sale as hereinafter directed. Certain specific portions of said property and premises, namely: The San Antonio Passenger Station, the Colorado Bridge, and certain equipment, are respectively subject to, and shall be by the said Master Commissioner sold subject to, the existing recorded mechanic's lien, the First Mortgage Colorado Bridge Bonds and the unsatisfied recorded equipment liens, specifically and respectively affecting the same.

The Master Commissioner, when ordered by this Court, shall publish at least once a week for the period of four weeks, in one or more newspapers published in each of the cities in which the notice of sale is hereinabove directed to be published, a notice requiring holders of any claims for such unpaid debts or liabilities to present the same for allowance, and any such claims which shall not be so presented or filed within the period of three months



after the first publication of such notice shall not be enforceable against said Receiver or against the property sold, or against the purchaser or his successors or assigns.

Any such purchaser or purchasers and his, its or their successors and assigns shall have the right to enter his or their appearance in this cause and he or they, or any of the parties to the said Equity Cause No. 2514, shall have the right to contest any claim, demand or allowance existing at the time of the sale and not then finally determined, and any claim or demand which may thereafter arise or be presented, which would be payable by such purchaser or his successors or assigns or which would be chargeable against the income in the hands of the Receiver or against the property purchased, and he or they may appeal from any decision relating to any such claim, demand or allowance.

IT WAS FURTHER ORDERED THAT William H. Flippen, Esq., of Dallas, Texas, be, and he hereby is, designated and appointed a Master Commissioner to make the sale hereby ordered and decreed and to execute and deliver a deed of conveyance and bill of sale of the property so to be sold to the purchaser or purchasers thereof upon the confirmation of such sale and completion of the payment of the entire bid as herein provided; the Court, however, reserving the right in term time or at Chambers to appoint another person such Master Commissioner with like powers, in case of the death or disability to act of the Master Commissioner hereby designated, or in case of his resignation or failure to act, or removal by the Court.

IT WAS FURTHER ORDERED AND DECREED that within thirty days from the confirmation of said sale, or such further time as the Court may allow, on application of the purchaser for good cause shown, the purchaser or purchasers, his, its or their successors and assigns, shall complete payment of the entire amount bid to the said Master Commissioner; and that on such pay-

ment the said purchaser or purchasers, his, its or their successors and assigns, shall be entitled to receive a deed of conveyance and bill of sale of the property purchased from the Master Commissioner, and from the other parties to this cause as herein provided, and to receive possession of the property so purchased from the parties holding possession of the same, and the Receiver shall deliver all of the property so purchased which may be in his possession to the said purchaser or purchasers, his, its or their successors and assigns, subject, however, to the said Mortgage dated November 1st, 1879, made by said defendant Railroad Company to John S. Kennedy and Samuel Sloan, as Trustees, and known as said Railroad Company's First Mortgage, and subject also to any unpaid indebtedness or liability contracted or incurred by said defendant Railroad Company in the operation of its railroad which the Court may hereafter order or decree herein to be prior or superior to the lien of said mortgage dated June 15th, 1881, except such as shall be paid or satisfied out of the income of the property in the hands of the Receiver herein, under orders of the Court entered or to be entered herein, and subject also to such debts, claims, liens and demands of whatsoever nature heretofore incurred or created or which may hereafter be incurred or created by the Receiver herein under orders of the Court heretofore or hereafter entered herein, and which have not been or shall not hereafter be paid by said Receiver under orders of the Court heretofore or hereafter entered herein, or other parties in interest herein or out of the proceeds of sale as hereinafter directed, and subject also, as to certain specific portions of said property and premises, namely, the San Antonio Passenger Station, the Colorado Bridge, and certain equipment, to the existing recorded mechanic's lien, the First Mortgage Colorado Bridge Bonds and the unsatisfied recorded equipment-liens, specifically and respectively affecting the same. And the Court reserves jurisdiction over said property, notwithstanding such deed or deeds or delivery

of possession, for the purpose of enforcing such payment.

IT WAS FURTHER ORDERED AND DECREED that the fund arising from such sale shall be deposited by said Master Commissioner in a United States depository to be named by the Court and shall be paid out and applied only upon orders of the Court herein as follows:

1. To and for the payment of all proper expenses attendant upon said sale, including the expenses, outlays and compensation of the Master Commissioner to make said sale, as such expenses, outlays and compensation may be hereafter fixed and allowed;
2. To and for the payment of any Receiver's certificates which may be outstanding under the orders of the Court entered in the said Equity Cause No. 2514 or in said Consolidated Cause No. 2501, to the extent that the same shall not be paid out of income in the hands of the Receiver;
3. To and for the payment of the costs in said Equity Cause No. 2514 and the share of the costs in said Consolidated Cause No. 2501 of the said complainant, The Farmers' Loan and Trust Company, Trustee, and the other parties to its said bill as defendants thereunder, and to and for the charges, compensation, allowances and disbursements of the complainant, The Farmers' Loan and Trust Company, as Trustee, under the said mortgage dated June 15th, 1881, and its solicitors and counsel, and of the Receiver and his solicitors and counsel, and also to and for such other proper allowances, compensations and disbursements to the parties in said Equity Cause No. 2514 or their counsel and to the Special Master herein as the Court shall order. All of the payments to be made under this sub-division shall be hereafter fixed and allowed and taxed by this Court herein.
4. To and for the payment of the bonds and coupons

of the defendant Railroad Company secured by the said mortgage dated June 15th, 1881, with interest thereon, to the amount hereinbefore specified, together with interest thereon at the rate of six per centum per annum to the date of payment, or, if such fund be not sufficient to pay the same in full, then to the payment of the same pro rata; that each of the said bonds presented to the Master Commissioner shall, if the holder thereof shall so request, be stamped or endorsed in some way by said Master Commissioner, so as to show the amount that has been paid on account of the same, and on account of the coupon interest due thereon, and be returned so stamped and endorsed to the holder thereof; that in case of payment in full said bonds, with interest thereon, the same shall be delivered with payment in full stamped thereon, by the Master Commissioner, to the purchaser or purchasers at the sale, to be held as a muniment of title; and

5. If, after making all of the above payments, there shall be any surplus, the same shall be paid according to the further order of Court in that regard.

AND FURTHER, that in case there shall be any deficiency in the amount required to be paid in full of the several amounts directed and allowed to be paid, then the said Master Commissioner shall report to the Court the amount of the deficiency, and the complainant as Trustee, shall have judgment against the said defendant Railroad Company for the amount due, and shall have execution therefor, pursuant to the rules and practice of this court; and

IT WAS FURTHER ORDERED AND DECREED that the defendants International and Great Northern Railroad Company and Thomas J. Freeman, as Receiver of the International & Great Northern Railroad Company, and the complainant The Farmers Loan & Trust

Company, be, and they hereby are, directed to execute and deliver but under the direction of the Master Commissioner, conveyances executed by them respectively by way of confirmation and further assurance of title to the said purchaser or purchasers, his, its or their assigns, of all and singular the mortgaged property and premises, and every part and parcel thereof, of every kind and description, wherever situated, hereby directed to be sold by the Master Commissioner; and that the form of said conveyance and mode of execution thereof shall be settled and approved by the Master Commissioner or by the Court or a Judge thereof, if any question shall arise with reference thereto; and that in default of such conveyance or conveyances this decree shall operate as such; and that the purchaser or purchasers at any such sale, and his, its or their successors and assigns, shall have the right within six months after the completion of the sale and delivery of the deed of the Master Commissioner as herein provided to elect whether or not to assume or adopt any lease or contract made by the defendant Railroad Company, and such purchaser or purchasers, his, its or their successors and assigns shall not be held to have assumed any of such leases or contracts which he or they shall so elect not to assume; such election shall be shown by filing with the Clerk of this Court from time to time within said period a description of such leases or contracts which he or they shall so elect not to assume; and

IT WAS FURTHER ORDERED, ADJUDGED AND DECREED that all questions not hereby disposed of, including the discharge of the receiver and the settlement of his accounts, and including the disposition of all claims heretofore filed herein, or hereafter to be so filed in accordance with the provisions of this decree, are hereby reserved for future adjudication; and the Court reserves jurisdiction of this cause and of the property affected by this decree for the purpose of final disposition of all such

questions and matters; and any party to this proceeding and any claimant whose claims have been or shall be so filed herein may apply to the Court for further orders and directions at the foot of this decree. And the Court reserves jurisdiction, upon due hearing, and subject to full right on the part of the purchaser to contest, to charge the property in the hands of the purchaser with any liabilities which have been, or which hereafter may at any time be, adjudged against the receiver for or by reason of any act or omission of his in the administration of his trust as such Receiver. Nothing in this decree contained, and no sale of the property hereunder, shall be construed, or operate, to estop any creditor who has intervened or may hereafter intervene herein, from asserting a preference or preferred charge upon the property in the hands of the purchaser, by reason of any rights or equities which he may establish herein because of the payments of first mortgage interest in this cause or otherwise, and any and all such claims of preference or preferred charge shall be considered and adjudicated herein without prejudice by reason of said sale.

Dated Dallas, May 10th, 1910.

A. P. McCORMICK,  
*Circuit Judge, Fifth Circuit.*  
EDWARD R. MEEK,  
*U. S. District Judge.*

## EXHIBIT "I."

IN THE CIRCUIT COURT OF THE UNITED  
STATES FOR THE NORTHERN DISTRICT  
OF TEXAS, AT DALLAS.

CONSOLIDATED CAUSE.

THE MERCANTILE TRUST COMPANY, TRUSTEE,  
FARMERS LOAN & TRUST COMPANY, TRUSTEE,  
GEORGE J. GOULD, ET AL.

*Complainants,*

vs.

No. 2501.

INTERNATIONAL & GREAT NORTHERN  
RAILROAD COMPANY,

*Defendant.*

FARMERS LOAN & TRUST COMPANY, TRUSTEE,

*Complainant,*

vs.

Equity No. 2514.

INTERNATIONAL & GREAT NORTHERN RAILROAD  
COMPANY, THE MERCANTILE TRUST COM-  
PANY, TRUSTEE, and THOMAS J. FREE-  
MAN, as Receiver for the International  
& Great Northern Railroad Company,

*Defendants.*

On this the 12th day of May, 1911, the above causes came on again to be heard on the petition of Farmers Loan & Trust Company, Trustee, the complainant in the decree of foreclosure entered herein May 10, 1910, for an order directing the Master Commissioner appointed by said decree to adjourn the sale advertised to take place under said decree on May 16, 1911, to June 13, 1911, and that the property set forth and described in said decree be sold on June 13, 1911, without further advertisement



than that heretofore made and now being made under the decree of May 10, 1910, as aforesaid, and

Thereupon came the complainants, Farmers Loan and Trust Company, Trustee, by its solicitors; The Mercantile Trust Company, Trustee, by its solicitors, International & Great Northern Railroad Company, by its solicitor, and Thomas J. Freeman, Receiver of the International & Great Northern Railroad Company, in person, and George J. Gould, et al., by their solicitors, and no objections to said postponement being made, but all parties so appearing consenting to said postponement;

It is therefore, ordered, adjudged and decreed by the Court: That the Master Commissioner heretofore appointed in this cause, personally, or by some person to be designated by him to act, in his name, and by his authority, shall adjourn the sale of the property, which he, by the decree of May 10, 1910, was directed to make and which has been advertised to take place on May 16, 1911, from said May 16, 1911, to June 13, 1911, and that no further advertisement of said sale shall be made than that which has already been made and is now being made under the decree of May 10, 1910, as aforesaid;

It is further ordered: That the said sale be made by the Master Commissioner on June 13, 1911.

Nothing herein contained shall be construed as having the effect of modifying, in any particular, the decree of May 10th, 1910, aforesaid.

A. P. McCORMICK,  
*United States Circuit Judge  
For the Fifth Circuit.*

## EXHIBITS "I" AND "J-1."

UNITED STATES CIRCUIT COURT, NORTHERN  
DISTRICT OF TEXAS.

THE MERCANTILE TRUST COMPANY, TRUSTEE,  
 THE FARMERS' LOAN AND TRUST COMPANY, TRUSTEE,  
 GEORGE J. GOULD, ET ALS.,  
 MARSHALL CAR WHEEL & FOUNDRY CO. ET AL.,  
*Complainants*

—VERSUS—

CONSOLIDATED CAUSE  
 No. 2501.

INTERNATIONAL AND GREAT NORTHERN RAILROAD  
 COMPANY,

*Defendant.*

THE FARMERS' LOAN AND TRUST COMPANY,  
*Complainant*

—VERSUS—

EQUITY CAUSE  
 No. 2514.

INTERNATIONAL & GREAT NORTHERN RAILROAD COM-  
 PANY, THE MERCANTILE TRUST COMPANY, AND  
 THOMAS J. FREEMAN AS RECEIVER OF THE INTER-  
 NATIONAL AND GREAT NORTHERN RAILROAD COM-  
 PANY,

*Defendants.*

FINAL REPORT OF WILLIAM H. FLIPPEN, MAS-  
 TER COMMISSIONER, SHOWING PAYMENT OF  
 PURCHASE PRICE AND CONVEYANCE AND  
 TRANSFER OF PROPERTY TO INTERNA-  
 TIONAL AND GREAT NORTHERN RAILWAY  
 COMPANY.

Now comes William H. Flippen, Master Commissioner,  
 appointed by decree of this Court and entered herein on  
 May 10, 1910, and reports as follows:

1. By reference to Report of Sale filed by the under-  
 signed Master Commissioner on June 14, 1911, and duly

confirmed by this Honorable Court, it will appear that the Purchaser at that time delivered to the Master Commissioner, pursuant to the terms of the decree of sale, a certified check for the sum of \$100,000 to qualify him as Bidder, and after the acceptance of his bid delivered in payment of ten per cent. of the purchase price as required by the decree a certificate of the Farmers Loan & Trust Company, Trustee, to the effect that it held to the credit of the Master Commissioner \$990,000 par value of the bonds and appurtenant unpaid coupons of the International & Great Northern Railroad Company, secured by the mortgage of said Company to the Farmers Loan & Trust Company, Trustee, dated June 15, 1881.

2. From time to time thereafter the time for the completion of the payment of the purchase price for the property and franchises sold on June 13, 1911, was extended by order of this Court, the last extension expiring on September 15, 1911. On September 13, 1911, Frank C. Nicodemus, Jr., the Purchaser of said properties and franchises, desiring to complete the payment of the purchase price by delivering to the Master Commissioner in part payment thereof the bonds of the International & Great Northern Railroad Company, secured by its mortgage of June 15, 1881, to the Farmers Loan & Trust Company, as Trustee, aforesaid, it became necessary to ascertain the distributive value of said bonds and appurtenant unpaid coupons in the proceeds of sale at which the same with coupons thereto annexed could be accepted in payment of the purchase price under the terms of the decree of sale. To this end it became necessary for the Master Commissioner to ascertain the amount of expenses, disbursements and other allowances to be deducted under the terms of the decree of sale from the proceeds of sale before any distribution could be made on account of the bonds and coupons secured by said mortgage. Your Master Commissioner also undertook to ascertain approximately the cost in the several equity causes, consolidated under Cause No. 2501, and the several items of cost, ex-

penses and disbursements provided by the decree were arranged as follows:

(a) With respect to the expenses attendant upon the sale including compensation and expenses and allowances to the Master Commissioner, the International & Great Northern Railway Company, Assignee of the Purchaser, as hereinafter more fully set forth, entered into a stipulation which was satisfactory to the Master Commissioner, whereby said Railway Company agreed to pay or cause to be paid as a part of the said purchase price of property and franchises such further sum in cash as might thereafter be fixed and determined by this Honorable Court as and for the compensation, allowances, disbursements and expenses of the Special Master theretofore appointed in this cause and of the Master Commissioner appointed in aforesaid decree, which said stipulation and agreement is on file with the Master Commissioner.

(b) It was ascertained by your Master Commissioner that there were no outstanding Receiver's certificates issued under the orders of this Honorable Court for the payment of which provision was made in said decree of sale; although there were outstanding certain Receiver's Equipment obligations of an aggregate principal amount of \$276,000 subject to which the property was sold and which were assumed by the Purchaser as a part of the purchase price in accordance with the provisions of the order of this Honorable Court authorizing the Receiver to create and issue said obligations.

(c) Your Master Commissioner ascertained as accurately as possible the amount of costs which had accrued in the several causes consolidated into Equity Cause No. 2501, and the amount of said costs as thus ascertained was deducted from the amount distributable by the Master Commissioner to the holders of said second mortgage bonds and coupons and International & Great Northern Railway Company, assignee of the Purchaser as hereinafter stated, stipulated and agreed that in the

event the amount of costs required by the foreclosure decree to be paid out of the fund arising from said sale should exceed the sum so ascertained it would upon the determination of said excess, pay the amount thereof upon the direction of the Court all of which will more fully appear from the original of said stipulation on file with the Master Commissioner.

(d) The purchaser at said sale delivered to the Master Commissioner a stipulation and agreement in writing duly executed by all of the parties of record to said causes and the Receiver by their respective solicitors, stipulating and fixing the amount of compensation and allowances to be made to the Farmers Loan & Trust Co. as Trustee, under the mortgage of June 15, 1881, and to other parties as contemplated by the provisions in this behalf contained in decree of May 10, 1910, and authorizing the Master Commissioner to pay the amounts so agreed upon to the respective parties entitled thereto from the proceeds of sale, which said stipulation and agreement is now filed with the Master Commissioner. The aggregate of the amounts so agreed upon for compensation, allowances and disbursements to the respective parties entitled thereto as aforesaid were deducted by the Master Commissioner from the proceeds of sale in arriving at the distributive value of the bonds and coupons aforesaid and the several amounts so stipulated and agreed upon have been paid to the respective parties entitled thereto under the terms of said agreement by the Master Commissioner as authorized under the terms of said stipulation.

(e) The decree of May 10th, 1910, found that there were outstanding and unpaid Coupons appertaining to bonds secured by the aforesaid mortgage of June 15th, 1881, which matured prior to March 1st, 1908, but which had not been presented for payment, of an aggregate principal amount of \$1,212.50, on which there was accrued interest at the rate of six per cent. per annum to the date of said decree. In order to avoid delay in making the set-

tlement of the purchase price and difficulty in ascertaining the distributive value of the several bonds with coupons maturing March 1st, 1908, and subsequent thereto, the purchaser requested that said coupons maturing prior to March 1st, 1908, be eliminated from consideration in calculating the distributive value of said bonds with coupons maturing March 1st, 1908, and undertook and agreed to pay to the Master Commissioner the ascertained value of all of said \$1,212.50 of coupons maturing prior to March 1st, 1908, on the basis of said decree of May 10th, 1910, which amount aggregating the sum of \$1,568.00 has been paid to the Master Commissioner by the International & Great Northern Railway Company, assignee of the purchaser and is now held by the Master Commissioner subject to the orders of the Court.

(f) After deducting the sums hereinbefore mentioned and making due provision for expenses and allowances provided by said decree of sale as aforesaid and eliminating from consideration the value of said coupons maturing prior to March 1st, 1908, provided for by separate fund deposited with the Master Commissioner as aforesaid, it was ascertained that the balance of said purchase price available for distribution to the bonds of the International & Great Northern Railroad Company secured by its mortgage of June 15, 1881, and coupons thereunto belonging maturing on March 1st, 1908, and subsequent thereto, mentioned in said decree of sale, was \$12,466,130.45, and that the distributive value of each of said bonds with coupons maturing March 1st, 1908, and subsequent coupons attached, was \$1,199.704,595.

3. On September 13th, 1911, Frank C. Nicodemus, Jr., the Purchaser of said property and franchises at said sale presented to the Special Master in partial payment of the purchase price of said property and franchises, bonds of the International & Great Northern Railroad Company secured by its mortgage of June 15th, 1881, to the Farmers Loan and Trust Company, Trustee, in aggregate par value of \$9,346,500 of principal with coupons maturing

March 1st, 1908, and subsequent coupons thereto attached, which together with the bonds of an aggregate par value of \$990,000 of principal with coupons maturing March 1st, 1908, and subsequent coupons attached, for which certificate to the order of the Master Commissioner was presented to him at the time of acceptance of said bid, made the total amount of said bonds presented to the Master Commissioner in payment of said bid \$10,336,500 in aggregate par value of principal, leaving outstanding bonds for which provision must be made in cash of aggregate par value of \$54,500 of which the distributive value on the above basis amounted to an aggregate sum of \$65,383.89; and at the same time the Purchaser delivered the Master Commissioner in payment of the balance of the purchase price of said property and franchises, a certified check for the sum of \$144,253.45, being the entire amount of the balance due.

The entire purchase price of \$12,645,000 was thus paid by the purchaser as follows:

Amount paid by purchaser in cash on June 13th, 1911.....	\$100,000.00
Amount paid in bonds of International and Great Northern Railroad Company, as follows:	
Delivered on June 13th, 1911....	\$990,000
Delivered on September 13th, 1911	9,346,500
<hr/>	
Total bonds delivered.....	\$10,336,500
at distributive value of \$1,199.704,595 per bond .....	12,400,746.55
Balance paid in cash on September 13th, 1911 .....	144,253.45
<hr/>	
	\$12,646,000.00

4. The entire purchase price having thus been paid by the Purchaser, Frank C. Nicodemus, Jr., delivered to your Master Commissioner an assignment wherein and whereby he assigned, transferred and set over to the In-



ternational & Great Northern Railway Company, a corporation organized under the laws of the State of Texas, its successors and assigns, all his right, title and interest under said decree or by virtue of his said bid and purchase and payment of the entire purchase price bid, in and to all the railroads, property, rights, franchises, functions, immunities and appurtenances thereunto belonging, rolling stock, property and premises of every kind and description, sold at said sale, including his rights to receive conveyance and possession thereof; and wherein and whereby he did direct that the deed or deeds directed by the said decrees to be made to the purchaser or purchasers at said sale, or his, its or their successors or assigns, conveying and releasing said property, as in said decree provided, he made and delivered to said International & Great Northern Railway Company, its successors and assigns, all of which will more fully appear from the original of said assignment executed by said Frank C. Nicodemus, Jr., attached hereto as Exhibit "A" and made a part of this report.

5. The Master Commissioner thereupon executed and acknowledged in forty counterparts a deed for said property, franchises, rights, privileges and immunities sold under and described in said decree of May 10, 1910, and said deed having also been executed and acknowledged by The Farmers Loan and Trust Company, Trustee; The International and Great Northern Railroad Company; Thomas J. Freeman, as Receiver of The International & Great Northern Railroad Company; Frank C. Nicodemus, Jr., the purchaser, and International and Great Northern Railway Company, was delivered to the International and Great Northern Railway Company assignee of the purchaser pursuant to the provisions of said decree of May 10, 1910, and of the assignment of the purchaser aforesaid. Copy of said deed is executed and attached hereto as Exhibit "B" and made a part of this report.

6. The balance of funds in the hands of the Master Commissioner has been deposited to his order in the City

National Bank of Dallas, Texas, to await the further orders of the Court, the same being applicable to the outstanding bonds and coupons secured by the aforesaid Mortgage of June 15th, 1881, not presented to the Master Commissioner as hereinbefore stated.

7. The several stipulations and agreements herein mentioned are exhibited herewith and are held by the Master Commissioner for such final disposition as the Court may direct. Respectfully submitted.

WILLIAM H. FLIPPEN,  
*Master Commissioner.*

Dallas, Texas, September 22, 1911.

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EXHIBIT "A"

WITH REPORT OF MASTER COMMISSIONER,  
WILLIAM H. FLIPPEN,

Dated September 22, 1911.

FRANK C. NICODEMUS, JR.,

To

INTERNATIONAL & GREAT NORTHERN RAILWAY COMPANY.

ASSIGNMENT OF BID.

Dated August 28th, 1911.

KNOW ALL MEN BY THESE PRESENTS, That:

WHEREAS in a certain cause pending in the Circuit Court of the United States for the Northern District of Texas, wherein the Farmers Loan and Trust Company, trustee, is complainant and International and Great Northern Railroad Company and others are defendants, a decree of foreclosure and sale was entered by the said court on or about the 10th day of May, 1910; and

WHEREAS, by said decree of said Circuit Court of the United States for the Northern District of Texas in said cause therein pending, it was, among other things, adjudged and decreed that International and Great North-

ern Railroad Company pay or cause to be paid, within ten days after the entry of said decree, certain amounts therein found to be due under the Second Mortgage of International and Great Northern Railroad Company dated June 15, 1881, made to said The Farmers' Loan and Trust Company, as Trustee, and that, in default of such payment by said Railroad Company or by some one claiming under it or for its account, within the time fixed as aforesaid, the mortgaged premises and franchises should be sold, as provided in said foreclosure decree, by William H. Flippen, the Master Commissioner appointed by said decree, at public auction, to the highest bidder or bidders, at the passenger station of International and Great Northern Railroad Company in the City of Palestine, Anderson County, State of Texas, on a day or days to be fixed by the said Master Commissioner, after giving notice of said sale as in said decree provided; and

WHEREAS neither said International and Great Northern Railroad Company nor anyone claiming under it nor anyone for its account, did, within the time fixed or at any other time make payment of the sums so decreed to be payable, or any part thereof; and

WHEREAS in causes ancillary to said cause, between the same parties and pending respectively in the Circuit Courts of the United States for the Southern District of Texas, the Eastern District of Texas and the Western District of Texas, a decree was entered by each of said courts on the following dates respectively, to-wit, in the Circuit Court of the United States for the Southern District of Texas, on or about June 25, 1910; in the Circuit Court of the United States for the Eastern District of Texas; on or about June 27, 1910; and in the Circuit Court of the United States for the Western District of Texas, on or about June 29, 1910; by each of which said decrees it was, among other things, adjudged and decreed that the decree rendered and pronounced by the Circuit Court of the United States for the Northern District of

Texas be rendered and pronounced as the decree of said courts respectively in said ancillary causes; and;

WHEREAS the said Master Commissioner, in pursuance of said decrees, due notice having been given as therein prescribed and according to law, did duly sell, at public auction, at the passenger station of International and Great Northern Railroad Company in the City of Palestine, Anderson County, State of Texas, on the 13th day of June, 1911, all and singular the railroads, property, rights, franchises, functions, immunities and appurtenances to the same belonging, rolling stock, property and premises of every kind and description covered by and embraced in said Second Mortgage of International and Great Northern Railroad Company and in said decrees described, and thereby directed to be sold, to Frank C. Nicodemus, Jr., at and for the sum of twelve million six hundred and forty-five thousand dollars, he being the highest bidder for said property at said sale and having duly and seasonably qualified as a bidder thereat, as required by said decrees in that behalf; and

WHEREAS the said Master Commissioner did thereafter duly make and file his report of said sale, which report and the sale therein reported, have been, upon due notice and by orders of court entered in every of said causes, duly confirmed; and

WHEREAS the said Frank C. Nicodemus, Jr., has, in all respects to the date of these presents, complied with the provisions of said decrees of foreclosure and sale, and has made payment of the entire amount bid for the property sold; and

WHEREAS in said decree it is, among other things, provided that, on payment by the purchaser or purchasers, his, its or their successors or assigns, of the entire amount bid at the sale of said property, said purchaser or purchasers, his, its or their successors or assigns, shall be entitled to receive a deed of conveyance and bill of sale of the property purchased from the Master Commissioner and from other parties to said cause, as in said decrees

provided, and to receive possession of the property so purchased; and

WHEREAS International and Great Northern Railway Company, a corporation organized and existing under the laws of the State of Texas, is desirous of acquiring and is authorized to acquire all the right, title and interest of the purchaser at said foreclosure sale in and to the property sold thereat, including the right of the said purchaser to receive a deed or deeds, pursuant to said decrees, of the property purchased by him at said foreclosure sale;

NOW, THEREFORE, THESE PRESENTS WITNESS:

That the undersigned, Frank C. Nicodemus, Jr., in consideration of the premises and of the sum of One Dollar to him duly paid by International and Great Northern Railway Company, at or before the ensealing of these presents, the receipt whereof is hereby acknowledged, and of other good and valuable considerations, has sold, assigned, transferred and set over, and hereby does sell, assign, transfer, and set over, unto International and Great Northern Railway Company, its successors and assigns, all his right, title and interest under said decrees or by virtue of his said bid and purchase and payment of the entire purchase price bid, in and to all the railroads, property, rights, franchises, functions, immunities and appurtenances to the same belonging, rolling stock, property and premises of every kind and description, sold at said sale, including his right to receive conveyance and possession thereof.

TO HAVE AND TO HOLD the same unto the said International and Great Northern Railway Company, its successors and assigns, for its and their own use forever.

SUBJECT, however, to all the terms and reservations in said decrees set forth.

And said Frank C. Nicodemus, Jr., does hereby direct and request that the deed or deeds directed by the said decrees to be made to the purchaser or purchasers at said sale, or his, its or their successors or assigns, conveying and releasing said property as in said decrees provided,

be made and delivered to said International and Great Northern Railway Company, its successors and assigns.

And These Presents Further Witness, that International and Great Northern Railway Company hereby accepts the foregoing assignment, and covenants and agrees to pay, satisfy and discharge, and to indemnify and forever hold harmless said Frank C. Nicodemus, Jr., his executors or administrators, from and against any and all loss, damages, expenses and liabilities which may have been incurred or which hereafter may be incurred by said Frank C. Nicodemus, Jr., or his executors or administrators, by reason of his said bid and the acceptance thereof (other than the payment of the purchase price bid), or by reason of any act or thing required, by said decrees or said orders confirming said sale, to be performed by the purchaser thereat (other than as aforesaid).

IN WITNESS WHEREOF, the undersigned, Frank C. Nicodemus, Jr., has hereunto set his hand and affixed his seal, and International and Great Northern Railway Company has caused these presents to be executed by its President or a Vice-President, and its corporate seal to be hereunto affixed, attested by its Secretary or an Assistant Secretary, this 28th day of August, 1911.

FRANK C. NICODEMUS, JR.,  
*As Purchaser.*

INTERNATIONAL AND GREAT NORTHERN  
RAILWAY COMPANY,

By THOMAS J. FREEMAN,  
*President.*

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"EXHIBIT B."  
WITH REPORT OF MASTER COMMISSIONER,  
WILLIAM H. FLIPPEN.

Dated September 22, 1911.

WILLIAM H. FLIPPEN, MASTER COMMISSIONER,  
AND OTHERS,

To

INTERNATIONAL & GREAT NORTHERN RAILWAY COMPANY  
DEED

Under Decrees Foreclosing Second Mortgage of Inter-  
national and Great Northern Railroad Company.

Dated August 31st, 1911.

(Same as Exhibit L hereinafter, which see.)

UNITED STATES CIRCUIT COURT, NORTHERN  
DISTRICT OF TEXAS.

THE MERCANTILE TRUST COMPANY, TRUSTEE,  
THE FARMERS' LOAN AND TRUST COMPANY, TRUSTEE,  
GEORGE J. GOULD, ET ALS.,  
MARSHALL CAR WHEEL & FOUNDRY CO. ET AL.,

*Complainants,*

VERSUS

CONSOLIDATED CAUSE

No. 2501.

INTERNATIONAL AND GREAT NORTHERN RAILROAD  
COMPANY,

*Defendant.*

THE FARMERS' LOAN AND TRUST COMPANY,  
*Complainant,*

VERSUS

EQUITY CAUSE

No. 2514.

INTERNATIONAL & GREAT NORTHERN RAILROAD COM-  
PANY, THE MERCANTILE TRUST COMPANY, AND  
THOMAS J. FREEMAN, AS RECEIVER OF THE INTER-  
NATIONAL & GREAT NORTHERN RAILROAD COMPANY,  
*Defendants.*

DECREE CONFIRMING FINAL REPORT OF WIL-  
LIAM H. FLIPPEN, MASTER COMMISSIONER,



**AND ACCOUNT AND REPORT OF THOMAS J. FREEMAN, RECEIVER.**

On this day came William H. Flippen, Master Commissioner, appointed by decree entered in this cause on May 10th, 1910, and filed his final report and exhibits "A" and "B" therewith showing the payment of the entire purchase price of the properties and franchises of the International & Great Northern Railroad Company sold under said decree and the delivery of the deed therefor to the International & Great Northern Railway Company, assignee of the purchaser at said sale.

And then came also Thomas J. Freeman, Receiver of the International & Great Northern Railroad Company heretofore appointed by order of this Court entered in this cause and filed his final account and report as such Receiver.

And then came also International & Great Northern Railway Company, grantee of said railroads, properties and franchises and entered its appearance as party to this cause by Wilson & Dabney, its solicitors, and filed its motion in writing for a confirmation of the aforesaid report of said Master Commissioner and the aforesaid account and report of said Receiver and also filed a stipulation, agreement and consent in writing of the Farmers Loan & Trust Company, Trustee, by its solicitors, The International & Great Northern Railroad Company by its solicitors, The Mercantile Trust Company, Trustee, by its solicitors, Thomas J. Freeman as Receiver by his solicitor, Frank C. Nicodemus, Jr., by his solicitor and International & Great Northern Railway Company by its solicitors and George J. Gould et al. by their solicitor, accepting and approving said report of said Master Commissioner and accepting and approving said account and report of said Receiver, and consenting that the same be forthwith confirmed without being required to lie or remain in the Clerk's office for exceptions, and waiving the provisions of any rules of Court or decree in that behalf.

And it appearing to the Court from the final report of the Master Commissioner aforesaid that the entire purchase price bid for the railroads, properties, and franchises of the International & Great Northern Railroad Company sold on June 13th, 1911, as heretofore reported to the Court and confirmed, has been duly paid in full by the purchaser at said sale on September 13th, 1911, and that all the rights of the purchaser were duly assigned by instrument in writing filed with the Master Commissioner to the International & Great Northern Railway Company, a corporation organized under the laws of the State of Texas, and that a deed for said railroads, properties and franchises has been duly executed and acknowledged by said Master Commissioner and by all other parties required to execute and acknowledge same by the terms of said decree of May 10th, 1910, as in said decree provided, and that said deed so executed and acknowledged has been duly delivered to the International & Great Northern Railway Company, assignee of the purchaser aforesaid;

And it further appearing to the Court from the report of Thomas J. Freeman, Receiver, this day filed as aforesaid that on request of the International & Great Northern Railway Company grantee of said deed the said Thomas J. Freeman, Receiver, did on September 16th, 1911, deliver to the International & Great Northern Railway Company, grantee as aforesaid, full possession of all of the railroads, properties and franchises, including money on hand and current assets formerly owned by the International & Great Northern Railroad Company or said Receiver, and then in the possession, custody or control of said Receiver;

And it further appearing to the Court that the final accounts of the said Thomas J. Freeman, Receiver, are in proper form it is therefore, on motion of the International & Great Northern Railway Company and by consent of the various parties of record to this cause as evidenced by the stipulation, agreement and consent in writ-

ing this day filed herein as aforesaid, adjudged, ordered and decreed as follows:

1. That the final report of William H. Flippen, Master Commissioner showing the payment in full of the purchase price for the railroads, properties and franchises of the International & Great Northern Railroad Company sold on June 13th, 1911, and the conveyance and transfer of same to the International & Great Northern Railway Company, assignee of the purchaser, which report has been this day filed as aforesaid, be and the same is in all respects approved and confirmed, and the action of the said Master Commissioner in accepting the settlement for the railroads, properties and franchises aforesaid, and executing, acknowledging and delivering to International & Great Northern Railway Company, assignee of the purchaser, a deed of conveyance of said railroads, properties and franchises as in said report fully and detailed set forth is hereby in all respects approved and confirmed.

2. That the report of Thomas J. Freeman, Receiver, this day filed showing the delivery of possession of the railroads, properties and franchises in his possession or under his control, is in all respects confirmed, and the action of the said Thomas J. Freeman, Receiver, in delivering possession of the said railroads, properties and franchises formerly owned by the International & Great Northern Railroad Company or said Receiver, and then in his possession, custody or control, to the International & Great Northern Railway Company on September 16th, 1911, as set out in detail in said report, is in all respects approved and confirmed, and it is hereby ordered and adjudged that the said International & Great Northern Railway Company, grantee as aforesaid, shall take and hold said properties, released and discharged from the possession and custody of said Receiver and of this Court from and after the 16th day of September, 1911.

3. That the final accounts of Thomas J. Freeman, Re-

ceiver of this Court as aforesaid, this day filed, be and the same are hereby accepted, approved and confirmed.

4. And it now appearing to the Court that the duties of said Thomas J. Freeman, as a Receiver of this Court in this cause, have been fully performed and that proper and final accounts have been rendered by him of all property or monies coming into his control as such Receiver, and that said accounts have been duly confirmed, it is now adjudged, ordered and decreed that said Thomas J. Freeman, Receiver as aforesaid, be and he is hereby discharged as Receiver of this Court in this cause, and the said Thomas J. Freeman and any surety on any bond given by him as such Receiver are hereby discharged from further liability on or account of any such bond; and all of the railroads, properties and franchises of the International & Great Northern Railroad Company or said Receiver formerly in the possession, custody or control of said Receiver, are hereby finally discharged from the possession, custody and control of said Receiver and of this Court.

A. P. McCORMICK,

*United States Circuit Judge.*

Dated at Dallas, Texas, September 25th, 1911.

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**EXHIBIT "K."**

**ARTICLES OF INCORPORATION**

**OF**

**INTERNATIONAL AND GREAT NORTHERN  
RAILWAY COMPANY.**

(Same as Exhibit to Original Answer.)

**EXHIBIT "L."**

**WILLIAM H. FLIPPEN, MASTER COMMISSIONER,  
AND OTHERS, TO  
INTERNATIONAL AND GREAT NORTHERN**

**DEED**

**Under Decrees Foreclosing Second Mortgage of International and Great Northern Railroad Company.**

**Dated August 31, 1911.**

**INDENTURE** made this 31st day of August, A. D. 1911, between

**WILLIAM H. FLIPPEN**, of Dallas, Texas, as Master Commissioner appointed by the decree entered in the causes hereinafter mentioned, by the Circuit Courts of the United States for the Northern District of Texas, the Southern District of Texas, the Eastern District of Texas, and the Western District of Texas, party of the first part;

**INTERNATIONAL AND GREAT NORTHERN RAILROAD COMPANY**, a corporation organized and existing under the laws of the State of Texas, party of the second part;

**THOMAS J. FREEMAN**, as Receiver of International and Great Northern Railroad Company, appointed by the aforesaid Circuit Courts of the United States in the causes hereinafter mentioned, party of the third part;

**THE FARMERS' LOAN AND TRUST COMPANY**, a corporation organized and existing under the laws of the State of New York, as trustee under a mortgage or deed of trust, hereinafter mentioned, executed by International and Great Northern Railroad Company, bearing date June 15, 1881, party of the fourth part;

**FRANK C. NICODEMUS, JR.** (unmarried), of New York City, New York, party of the fifth part; and

**INTERNATIONAL AND GREAT NORTHERN RAILWAY COMPANY**, a corporation organized and existing under the laws of the State of Texas, party of the sixth part:

**WHEREAS** International and Great Northern Railroad Company, party hereto of the second part, was duly or-

ganized and existing under the laws of the State of Texas, and was duly authorized under the laws of said State to own, hold and operate the railroads and to own and hold the other properties (real and personal) hereinafter particularly described; and

WHEREAS said International and Great Northern Railroad Company, party hereto of the second part, on or about the 15th day of June, 1881, executed and delivered a mortgage or deed of trust (hereinafter called the Second Mortgage) bearing date June 15, 1881, whereby it conveyed and transferred to The Farmers' Loan and Trust Company, party hereto of the fourth part, as trustee, its railroads, property and franchises, in said mortgage described, to secure certain bonds of said Railroad Company (hereinafter called the Second Mortgage Bonds), of which there were issued and outstanding on May 10, 1910, bonds in the aggregate principal amount of \$10,391,000; and

WHEREAS, on or about April 20th, 1908, said the Farmers' Loan and Trust Company, as trustee as aforesaid, filed its bill in equity in the Circuit Court of the United States for the Northern District of Texas, against said International and Great Northern Railroad Company and others, and prayed, among other things, for the foreclosure of the Second Mortgage, and such proceedings were thereafter had in said cause that on the 10th day of May, 1910, a decree of foreclosure and sale was entered by said Circuit Court of the United States for the Northern District of Texas wherein and whereby it was adjudged and decreed, among other things, that said International and Great Northern Railroad Company, party hereto of the second part, pay or cause to be paid, within ten days after the entry of said decree, the amounts therein found to be due upon the Second Mortgage, and that, in default of such payment by said International and Great Northern Railroad Company or by someone claiming under it or for its account, within the time fixed as aforesaid the said mortgaged premises and franchises

should be sold, as provided in said foreclosure decree; and

WHEREAS similar and ancillary causes had been brought and were pending between the same parties, in the Circuit Courts of the United States for the Southern District of Texas, the Eastern District of Texas and the Western District of Texas, in each of which Districts portions of the mortgaged premises, property and franchises were situated, and said decree entered by the Circuit Court of the United States for the Northern District of Texas on or about May 10, 1910, was subsequently adopted, rendered and pronounced as the decree of said other courts in said similar and ancillary causes therein pending, by decrees rendered by said Courts respectively on the following dates, namely, by the Circuit Court of the United States for the Southern District of Texas, on or about June 25, 1910; by the Circuit Court of the United States for the Eastern District of Texas, on or about June 27, 1910; and by the Circuit Court of the United States for the Western District of Texas, on or about June 29, 1910; to which said several suits and to the proceedings and record thereof in each of said Courts, including said Circuit Court of the United States for the Northern District of Texas, reference is hereby made; and

WHEREAS, by orders of said Circuit Courts of the United States for the Northern District of Texas, for the Southern District of Texas, for the Eastern District of Texas and for the Western District of Texas, in said causes therein pending, Thomas J. Freeman, party hereto of the third part, was, prior to the entry of said decrees of foreclosure, appointed Receiver of all the railroads, property and franchises covered by and embraced in the Second Mortgage; and

WHEREAS neither said International and Great Northern Railroad Company nor anyone claiming under it nor anyone for its account did, within the time fixed as afore-



said or at any other time, make payment of the sums decreed to be payable, or of any part thereof; and

WHEREAS William H. Flippen, party hereto of the first part, was in and by said decree of the Circuit Court of the United States for the Northern District of Texas, and in and by said ancillary decrees of the United States Circuit Courts for the Southern District of Texas, for the Eastern District of Texas, and for the Western District of Texas, appointed Master Commissioner, to execute said decrees and make the sale therein provided to be made, and to execute and deliver a deed of conveyance and bill of sale of the property decreed to be sold to the purchaser or purchasers thereof, or his or their successors or assigns, upon the confirmation of such sale and completion of the payment of the entire purchase price, as in said decrees provided; and

WHEREAS said William H. Flippen, Master Commissioner as aforesaid, gave due public notice, in pursuance of said decrees and in accordance with law, of the time and place of the sale under said decrees and of the manner and terms under which said sale was to be conducted, and duly complied with all of the provisions of said decrees relating to said sale, and in pursuance of said decrees, at the place specified therein, to-wit, at the passenger depot of International and Great Northern Railroad Company in the City of Palestine in the County of Anderson, in the State of Texas, on the premises to be sold, did on the 13th day of June, 1911, sell at public auction to Frank C. Nicodemus, Jr., party hereto of the fifth part, being the highest bidder at said sale and having duly qualified as a bidder thereat in the manner provided in said decrees, all and singular the railroads, property, rights, franchises, functions, immunities and appurtenances to the same belonging, rolling stock, property and premises of every kind and description, covered by or embraced in the Second Mortgage, as adjudged by said decrees and thereby directed to be sold, at and for the sum of Twelve Million, Six Hundred and Forty-five Thousand Dollars (\$12,645,000); and

WHEREAS, afterwards, said William H. Flippen, as Master Commissioner as aforesaid, did duly make and file his report of said sale, and by decree entered on or about June 14, 1911, by said Circuit Court of the United States for the Northern District of Texas, in said cause therein pending, the said report of sale was in all things ratified, approved and confirmed, and said sale to Frank C. Nicodemus, Jr., was confirmed, and made absolute and the said Frank C. Nicodemus, Jr., was adjudicated the purchaser of all the property, premises and franchises sold at said sale, subject, however, to all the terms of said decree of foreclosure entered by said Court on or about May 10, 1910, and subject also to the due performance by said purchaser, his successors and assigns, of all the obligations in said decree described; and

WHEREAS said Circuit Court of the United States for the Southern District of Texas, by decree entered in said cause therein pending on the 1st day of July, 1911, said Circuit Court of the United States for the Eastern District of Texas, by decree entered in said cause therein pending on the 7th day of July, 1911, and said Circuit Court of the United States for the Western District of Texas, by decree entered in said cause therein pending on the 11th day of August, 1911, respectively, adopted said decree of said Circuit Court of the United States for the Northern District of Texas confirming said sale, and in all things ratified, approved and confirmed said report of sale and confirmed and made absolute said sale to said Frank C. Nicodemus, and

WHEREAS the said Frank C. Nicodemus, Jr., party hereto of the fifth part, has in all respects complied with the provisions of said decrees of foreclosure and sale with reference to the payment of the amount of the bid made by him as aforesaid at said sale, and has paid or made settlement of the amount of his said bid as provided in said decrees; and

WHEREAS the said Frank C. Nicodemus, Jr., has duly assigned, transferred and set over unto International

and Great Northern Railway Company, party hereto of the sixth part, all of his right, title and interest, as said purchaser, in and to the property sold to him as aforesaid, including his right to receive deeds of conveyance and bills of sale thereof, as prescribed in the aforesaid decrees:

Now, THEREFORE, THIS INDENTURE WITNESSETH:

That the said William H. Flippen, as Master Commissioner, party hereto of the first part, in order to carry into effect the said sale made by him and in pursuance of the aforesaid decrees and in conformity with law, and in consideration of the premises and of the payment and settlement, as aforesaid, of the amount bid by the purchaser at said sale, to-wit, the sum of twelve million six hundred and forty-five thousand dollars, the receipt whereof is hereby acknowledged, and in further consideration of the obligations, undertakings and agreements hereinafter expressed and required by the terms of said decrees and by this Indenture to be performed, assumed, undertaken and discharged by the purchaser or purchasers at said sale, his or their successors and assigns, and which International and Great Northern Railway Company, party hereto of the sixth part, hereby assumes, has granted, bargained, sold, aliened, remised, released, conveyed, confirmed, assigned, transferred and set over, and by these presents does grant, bargain, sell, alien, remise, release, convey, confirm, assign, transfer and set over, unto International and Great Northern Railway Company, party hereto of the sixth part, and to its successors and assigns, in fee simple and absolutely, all and singular the railroads, property, rights, franchises, functions, immunities and appurtenances to the same belonging, rolling stock, property and premises of every kind and description, covered by or embraced in the Second Mortgage of International and Great Northern Railroad Company, dated June 15, 1881, as adjudged by said decree and thereby directed to be sold, and particularly the following-described property, namely:

ALL and singular the lands, tenements and heredita-

ments of the International and Great Northern Railroad Company, whether owned at the date of the execution of the Second Mortgage of said company—namely, June 15, 1881—or thereafter acquired by it, including its lines of railroad in the State of Texas extending from the Town of Longview in the County of Gregg, in said State, through said county and through the Counties of Rusk, Smith, Cherokee, Anderson, Leon, Robertson, Milam, Williamson, Travis, Hays, Comal, Bexar, Medina, Frio, La Salle, Encinal and Webb, to Laredo in said last-mentioned County; and from the town of Mineola, in Wood County, to Troupe, in Smith County; and from the City of Palestine, in Anderson County, through the Counties of Houston, Trinity, Walker and Montgomery to Houston, in Harris County; and from the town of Spring, in Harris County, through the Counties of Montgomery, Waller, Grimes, Brazos, Robertson, Falls, McLennan, Limestone, Hill, Navarro, Ellis and Johnson to the City of Fort Worth, Tarrant County; with branches and branch lines from the town of Overton to the town of Henderson, in Rusk County, from the town of Round Rock to Georgetown, in Williamson County, from the town of Phelps to the town of Huntsville, in Walker County, from the City of Houston, in Harris County, to the town of Columbia, in Brazoria County, from Nava-sota, in Grimes County, to Madisonville, in Madison County, from Calvert Junction to Calvert in Robertson County, and from Waco Junction to East Waco, in McLennan County; also the railway and railway tracks and property appurtenant thereto, and certain tracts of land in and adjacent to the City of Houston, in Harris County, known as the Houston Belt Terminals; a total distance of about eleven hundred and six (1106) miles of completed railroad; also the trackage rights of said International and Great Northern Railroad Company from Houston, in Harris County, to Galveston, in Galveston County, Texas, over the railroad of the Galveston, Houston and Henderson Railroad Company of 1882, accorded

to it by an agreement between said last-named Railroad Company and said International and Great Northern Railroad Company dated November 19, 1895; also all and singular the said International and Great Northern Railroad Company's railroads, tracks, rights-of-way, main lines, branch lines, superstructures, depots, depot grounds, station houses, engine houses, car houses, freight houses, wood houses, sheds, watering places, workshops, machine shops, bridges, viaducts, culverts, fences and fixtures, together with all its leases, leasehold interests, leased or hired lands, leased or hired railroads and all its locomotives, tenders, cars, carriages, coaches, trucks, and other rolling stock, its machinery, tools, weighing scales, turntables, rails, wood, coal, oil, fuel, equipment, furniture and material of every name, nature and description, together with all of its corporate rights, privileges, immunities and franchises, whether held at the time of the execution of said Second Mortgage of said company—namely, on June 15, 1881—or thereafter acquired by it (including the franchise to be a corporation), and all the tolls, fares, freights, rents, income, issues and profits thereof, and all the reversion and reversions, remainder and remainders thereof, as well as all property purchased or held by the Receiver in said causes, including any balance of cash, credits and income which may remain in his hands after application thereof as in said decree of the Circuit Court of the United States for the Northern District of Texas in said cause therein pending provided, or, as has been or may hereafter be directed by said Court in said cause, to the payment of receivership obligations and charges, and to the payment of claims which may be allowed by said Court in said cause against the same, with priority over said Second Mortgage dated June 15, 1881; excepting, however, all land grants, lands, land certificates, town lots and town sites owned or controlled by said International and Great Northern Railroad Company at the date of the execution of said Second Mortgage, namely, on

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June 15, 1881, or at any time prior to said date, which were not on the first day of November, 1879, or thereafter up to the said 15th day of June, 1881, actually occupied and in use by the said Railroad Company and necessary to the operation and maintenance of its lines of railroad; and excepting further, any portions of said premises and property which may have been released from the lien and operation of said Second Mortgage dated June 15, 1881, and the releases for which have been duly filed for record in the proper counties.

TO HAVE AND TO HOLD all and singular the above-mentioned and described railroads, property, rights, franchises, functions, immunities and appurtenances to the same belonging, rolling stock, property and premises of every kind and description, hereinbefore mentioned and conveyed, or intended to be conveyed, unto said International and Great Northern Railway Company, party hereto of the sixth part, being a corporation organized and existing under and pursuant to the laws of the State of Texas, and to its successors and assigns forever.

SUBJECT, however, to the mortgage dated November 1879, made by International and Great Northern Railroad Company to John S. Kennedy and Samuel Sloan, its trustees, and known as said Railroad Company's First Mortgage, and subject, also, to any unpaid indebtedness or liability contracted or incurred by said Railroad Company in the operation of its railroad which said Circuit Court of the United States for the Northern District of Texas may hereafter order or decree in said cause therein pending to be prior or superior to the lien of said Second Mortgage of said International and Great Northern Railroad Company, dated June 15, 1881, except such as shall be paid or satisfied out of the income of the property in the hands of the Receiver in said cause, under orders of said Court entered or to be entered in said cause, and subject, also, to such debts, claims, liens and demands of whatsoever nature heretofore incurred or created, or which may hereafter be incurred or created, by the Re-



ceiver in said cause under orders of said Court heretofore or hereafter entered in said cause and which have not been or shall not hereafter be paid by the Receiver, under orders of said Court heretofore or hereafter entered in said cause, or by other parties in said cause, or out of the proceeds of sale as directed in said decrees, and SUBJECT also, as to certain specific portions of said property and premises—namely, the San Antonio Passenger Station, the Colorado Bridge, and certain equipment—to the existing recorded mechanic's lien, the First Mortgage Colorado Bridge Bonds and the unsatisfied recorded equipment liens, specifically and respectively affecting the same; and SUBJECT, also, to all of the terms and reservations of each of the said decrees of foreclosure and sale and of the decrees of Court confirming said sales, above mentioned, whether in this Indenture expressly referred to or not.

AND THIS INDENTURE FURTHER WITNESSETH:

That International and Great Northern Railroad Company, party hereto of the second part, for and in consideration of the sum of one dollar, lawful money of the United States, the receipt of which is hereby acknowledged, and pursuant to the said decrees and by way of confirmation and further assurance of title to the said International and Great Northern Railway Company, party hereto of the sixth part, of all and singular the property and premises, and every part and parcel thereof, of every kind and description, wherever situated, covered by or embraced in said Second Mortgage of International and Great Northern Railroad Company, party hereto of the second part, dated June 15, 1881, as adjudged by said decrees, and thereby directed to be sold, has granted, bargained, sold, aliened, remised, released, conveyed, confirmed, assigned, transferred and set over, and by these presents does grant, bargain, sell, alien, remise, release, convey, confirm, assign, transfer and set over unto International and Great Northern Railway Company, party hereto of the sixth part and to its suc-



cessors and assigns forever, all the said railroads, property, rights, franchises, functions, immunities and appurtenances to the same belonging, rolling stock, property and premises of every kind and description, covered by and embraced in said Second Mortgage of International and Great Northern Railroad Company, dated June 15th, 1881, as adjudged in said decrees and thereby directed to be sold.

To HAVE AND TO HOLD all and singular the said railroads, property, rights, franchises, functions, immunities and appurtenances to the same belonging, rolling stock, property and premises (real and personal) unto International and Great Northern Railway Company, the party of the sixth part hereto, its successors and assigns forever.

AND THIS INDENTURE FURTHER WITNESSETH :

That Thomas J. Freeman, as Receiver as aforesaid, party hereto of the third part, for and in consideration of the premises and of the sum of one dollar, lawful money of the United States to him in hand paid, the receipt whereof is acknowledged, and pursuant to said decrees and by way of confirmation and further assurance of title to said International and Great Northern Railway Company, party hereto of the sixth part, of all and singular the property and premises, and every part and parcel thereof, of every kind and description, wherever situated, covered by or embraced in said Second Mortgage of International and Great Northern Railroad Company, dated June 15, 1881, as adjudged by said decrees, and thereby directed to be sold, has conveyed, released and confirmed, assigned, and by these presents does convey, release and confirm, unto International and Great Northern Railway Company, party hereto of the sixth part, and to its successors and assigns forever, all the said railroads, property, rights, franchises, functions, immunities and appurtenances to the same belonging, rolling stock, property and premises of every kind and description covered

by and embraced in said Second Mortgage, as adjudged in said decrees and thereby directed to be sold, and specifically all right, title and interest of said Receiver in and to all rolling stock and equipment acquired by said Receiver under and in pursuance of an order of the Circuit Court of the United States for the Northern District of Texas, entered on November 4, 1908, in the above-mentioned cause therein pending.

TO HAVE AND TO HOLD all and singular the said railroads, property, rights, franchises, functions, immunities and appurtenances thereunto belonging, rolling stock, property and premises (real and personal) unto the said party of the sixth part hereto, its successors and assigns forever.

SUBJECT, however, as to said rolling stock and equipment to the outstanding equipment notes of said Receiver issued by him pursuant to the aforesaid order of said Court; and International and Great Northern Railway Company hereby, for itself, its successors and assigns, covenants and agrees to and with said Receiver, party hereto of the second part, to assume payment of all unpaid equipment notes issued by said Receiver pursuant to the terms of the order of said Court above mentioned, dated November 4, 1908, and outstanding at the date of the delivery of this Indenture, and to perform all of the obligations of said Receiver under the agreement referred to in said order of court.

AND THIS INDENTURE FURTHER WITNESSETH:

That The Farmers' Loan and Trust Company, as trustee under said Second Mortgage of International and Great Northern Railroad Company, dated June 15, 1881, described in the said decrees, party hereto of the fourth part, in consideration of the premises and of the payment of the amount of the bid as aforesaid by the said purchaser at the said Master Commissioner's sale and of the assignment to the party of the sixth part of all the right, title and interest of said purchaser in and to the property sold at said sale, and in pursuance of said decrees, and

by way of confirmation and further assurance of title to the said party of the sixth part of all and singular the property and premises and every part and parcel thereof, of every kind and description, wherever situated, covered by or embraced in said Second Mortgage of International and Great Northern Railroad Company, dated June 15, 1881, as adjudged by said decrees and thereby directed to be sold, has transferred and released, and does by these presents transfer and release, to the said International and Great Northern Railway Company, party hereto of the sixth part, its successors and assigns forever, all the right, title and interest of said party of the fourth part under said Second Mortgage of International and Great Northern Railroad Company, dated June 15, 1881, and all its other right, title and interest, in and to any and all of the said railroads, property, rights, franchises, functions, immunities and appurtenances to the same belonging, rolling stock, property and premises of every kind and description covered by and embraced in said Second Mortgage as adjudged in said decrees and by said decrees directed to be sold.

TO HAVE AND TO HOLD all and singular the said railroads, property, rights, franchises, functions, immunities and appurtenances thereunto belonging, rolling stock, property and premises unto said party of the sixth part hereto, its successors and assigns forever.

AND THIS INDENTURE FURTHER WITNESSETH :

That said Frank C. Nicodemus, Jr., party hereto of the fifth part, the purchaser at said sale thereof of the property sold under the said decrees of foreclosure and hereinbefore by this Indenture conveyed by the said Master Commissioner to International and Great Northern Railway Company, the party of the sixth part, having for a valuable consideration, the receipt of which is hereby acknowledged, assigned, transferred and set over, as hereinbefore recited, unto the party of the sixth part, all of his right, title and interest in and to the property so sold, including his right to receive the conveyance thereof, and

all his other rights under said decrees in respect of said property or by virtue of his said bid therefor and purchase thereof, does, in consideration of the sum of one dollar, lawful money of the United States, the receipt of which is acknowledged, hereby join in the execution of this Indenture for the purpose of releasing and confirming, and he does hereby release and confirm, unto said International and Great Northern Railway Company, party hereto of the sixth part, its successors and assigns forever, all of his right, title and interest in and to the property sold at said sale and purchased by him, as aforesaid, and by this Indenture conveyed, to the party of the sixth part and each and every part thereof.

TO HAVE AND TO HOLD unto the party of the sixth part its successors and assigns forever.

Said International and Great Northern Railway Company hereby, for itself, its successors and assigns, covenants and agrees to and with said Frank C. Nicodemus, Jr., party hereto of the fifth part, to perform, satisfy and discharge each and all of the terms of the decrees of foreclosure and sale in this Indenture recited, on the part of the purchaser at the sale thereunder to be performed, satisfied and discharged (other than the payment of the purchase price bid which has been made by said Nicodemus), and as his assignee, to enter its appearance in said causes, and to indemnify and forever hold harmless said Frank C. Nicodemus, Jr., party hereto of the fifth part, his executors and administrators, from and against any and all loss, damages, expenses and liabilities whatsoever which may have been incurred or which hereafter may be incurred by said Frank C. Nicodemus, Jr., or his executors or administrators, by reason of the bid of said Frank C. Nicodemus, Jr., at the above-mentioned sale and of the acceptance of said bid, or by reason of any acts or things required by said decrees or orders of court to be assumed or performed by said Frank C. Nicodemus, Jr., as such purchaser or by it, said Railway Company, as his assignee.

No personal covenant or liability shall be implied against the parties of the first, third, fourth or fifth parts to this Indenture, or any of them, by reason of the execution of this deed or of any recital or covenant herein contained.

In order to facilitate the recording of this Indenture, forty originals thereof have been executed, acknowledged and delivered by the respective parties, all or any one or more of which may be recorded, and each of which, when executed, acknowledged and delivered, shall be deemed an original, and all collectively one instrument.

IN WITNESS WHEREOF, each of the said parties hereto of the first, third and fifth parts has hereunto set his hand and seal, and each of the parties of the second, fourth and sixth parts has caused these presents to be signed by its President or a Vice-President, and its corporate seal to be hereunto affixed and attested by its Secretary or an Assistant Secretary, the day and year first above written.

(SEAL.)

WILLIAM H. FLIPPEN,  
As Master Commissioner.  
INTERNATIONAL AND GREAT NORTHERN  
RAILROAD COMPANY,  
by

FRANK J. GOULD,  
Vice-President.

(Corporate Seal.)

Attest:

H. B. HENSON,  
Assistant Secretary.

THOMAS J. FREEMAN,  
As Receiver.

THE FARMERS' LOAN AND TRUST COMPANY,  
by

SAM SLOAN,  
Vice-President.

(Corporate Seal.)

Attest:

A. V. HEELY,  
Secretary.

(SEAL.) FRANK C. NICODEMUS, JR.,  
As Purchaser.

INTERNATIONAL AND GREAT NORTHERN  
RAILWAY COMPANY,

by  
(Corporate Seal.) GEORGE H. TAYLOR,  
Attest: Vice-President.  
H. B. HENSON,  
Assistant Secretary.

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### EXHIBITS "M" AND "N."

The Chairman stated that under the terms of decree of sale under which the property and franchises of the International and Great Northern Railroad Company were purchased by this Company, the purchaser or his assignee had six months from completion of the sale and delivery of the deed within which to elect whether it would assume leases and contracts of the old Company, and to evidence its election by filing notice with the Clerk of the United States Circuit Court for the Northern District of Texas, at Dallas, Texas, that the President had prepared a list of leases and contracts which it was thought desirable for this Company to elect not to assume, though many of these leases and contracts could be renewed on other terms to the advantage of the Company, and suggested that the Board take action to authorize the filing of the necessary notice that this Company elected not to assume said leases and contracts, a list of which was presented to the Board. On consideration whereof, the following resolution was presented, and on motion duly seconded, was unanimously adopted:

*Resolved*, that this company, as the assignee of the purchaser at the sale under the decree of foreclosure entered by the United States Circuit Court for the Northern District of Texas on or about May 10, 1910, in a certain cause therein pending wherein The Farmers' Loan and

Trust Company, trustee, is complainant, and International and Great Northern Railroad Company and others are defendants, and the owner of all the railroads, property and franchises sold at said sale and conveyed to this company by deed of the Master Commissioner appointed by said decree, and others, which said deed was delivered to this Company on or about September 16, 1911, does hereby elect, pursuant to the provisions of said decree, not to assume the leases or contracts, or alleged leases or contracts, which are described as follows, to-wit:

(The same as listed in the next document below.)

and that the proper officers of this company be, and they are hereby, authorized and directed to file with the Clerk of the United States Circuit Court for the Northern District of Texas, in the cause above mentioned, a notice of the election of this Company not to assume the above-mentioned leases or contracts, or alleged leases or contracts, as provided by said decree of foreclosure and sale entered on May 10th, 1910, such notice being in such form as may be prepared or approved by counsel for this company, and to give such notice and take such further action as may be necessary or proper, and as said counsel may advise, in order to make effective the election of this company as above expressed.

The Board considering the statement of the Chairman to the effect that many of these leases might be renewed by this company on terms satisfactory to it; after full discussion the following resolution was presented and on motion duly seconded was unanimously adopted.

*Resolved*, That the matter of renewing any leases and contracts included in the list of leases and contracts which this Company has elected not to assume, as set out in the resolution this day adopted, be and the same is hereby referred to the Chairman of the Board and President of this Company with power to act, and to renew in the name and on behalf of this Company such of said



leases and contracts as the said Chairman of the Board and President of this Company may determine to be to the best interest of this Company upon such terms and conditions and in such forms as the Chairman of the Board and President of this Company may determine, and to execute or cause to be executed under the corporate seal of this Company any leases or contracts so determined upon by them, provided, however, that none of said leases or contracts be made for periods exceeding twenty-five years without the approval of the Board of Directors or Executive Committee of this Company.

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**EXHIBIT "N."**

**UNITED STATES CIRCUIT COURT, NORTHERN  
DISTRICT OF TEXAS.**

**THE MERCANTILE TRUST COMPANY, TRUSTEE,  
THE FARMERS' LOAN AND TRUST COM-  
PANY, TRUSTEE, GEORGE J. GOULD, ET  
ALS., MARSHALL CAR WHEEL & FOUNDRY  
CO., ET AL.,**

*Complainants,*

—VERSUS—

CONSOLIDATED CAUSE  
No. 2501.

**INTERNATIONAL AND GREAT NORTHERN RAILROAD  
COMPANY,**

*Defendant.*

**THE FARMERS' LOAN AND TRUST COMPANY, TRUSTEE,  
*Complainant,***

—VERSUS—

EQUITY CAUSE  
No. 2514.

**INTERNATIONAL AND GREAT NORTHERN RAILROAD  
COMPANY, THE MERCANTILE TRUST COM-  
PANY AND THOMAS J. FREEMAN, AS RE-  
CEIVER OF THE INTERNATIONAL AND  
GREAT NORTHERN RAILROAD COMPANY,**

*Defendants.*

**In the above-entitled and numbered proceeding now**

comes International and Great Northern Railway Company, the assignee of Frank C. Nicodemus, Jr., the purchaser of the properties and franchises of International and Great Northern Railroad Company sold by virtue of the decree of foreclosure and sale in said receivership proceedings of date May 10, 1910, and through him the owner of the properties and franchises of the International and Great Northern Railroad Company sold at said sale, and, in accordance with said decree of sale, of date May 10, 1910, rendered in the above-entitled and numbered proceedings, files in this court in this proceeding within six months after the completion of the sale and delivery of the deed of the Master Commissioner, which said deed was delivered on September 16, 1911, this its election not to assume or adopt the following leases and contracts, or alleged leases and contracts, made or claimed to be made by the International and Great Northern Railroad Company, the defendant railroad company in the above proceedings, or by any other corporation under which it holds or whose rights it has acquired by consolidation or otherwise, or by any receiver of any of said corporations; and, filing this election not to assume or adopt or be bound by any lease or contract herein described made by the International and Great Northern Railroad Company, or by any other corporation under which it holds or whose rights it has acquired by consolidation or otherwise, or by any receiver of any of said corporations, the said International and Great Northern Railway Company states that it does not admit in any instance that any such contract or lease was in fact made by the International & Great Northern Railroad Company or other person or corporation, or, if made, that it was made with the formalities required by law, or is valid and enforceable against the International and Great Northern Railroad Company or other party therein, or that there are not valid and sufficient defenses thereto; but states that in the event such contract or lease was made by the International and Great Northern Railroad Company, or

other person or corporation, the Railway Company filing this election hereby expressly files its election not to assume or adopt any such lease or contract, or alleged lease or contract, and not to be bound thereby.

The leases and contracts and alleged leases and contracts which the International and Great Northern Railway Company hereby elects not to assume or adopt are the following, which are stated in substance and effect and with approximate accuracy, all dates to be considered as stated on or about, it not being practicable to give a description thereof more than sufficient to identify the alleged leases or contracts which are not assumed:

All the leases following, either made or claimed to have been made by the International and Great Northern Railway Company, the sold-out corporation:

Lease No. 498. Lessee, Nicholson & Jannin; property leased, a small tract of land at San Antonio for a storage house; date of lease, November 19, 1900; term, for a period of twenty-five years, with privilege of renewal; assigned April 26, 1905, to Laura P. Jannin and F. Johnson & Co.

Lease No. 508. The Longview Ice, Light & Bottling Co., of a tract of land at Longview, for an ice manufacturing plant; lease dated on or about March 23, 1901, and running for a period of fifty years, with privilege of renewal.

Lease No. 535-915, to Wm. Basse Hardware Co., of a hardware warehouse site at San Antonio, Texas; dated February 15, 1902, and running for a period of ten years, with privilege of renewal for an equal term.

Lease No. 558, to the Houston Rice Milling Company, of a site for a rice mill at Houston, Texas; dated April 1, 1902, running for ninety-nine years, said lease being also No. 1310.

Lease No. 563, to Armour Packing Co., of location for cold storage plant at San Antonio, Texas; dated January 15, 1900, running for twenty-five years, with the privilege of renewal. This lease was assigned November 8,

1908, to J. Ogden Armour, and assigned by J. Ogden Armour to Armour & Company of New Jersey on May 29, 1909.

Lease No. 592, to J. B. Mayfield, of a site for a wholesale warehouse at Tyler; dated August 25, 1902, for a term of twenty-five years, with privilege of renewal. On January 1, 1907, this lease was assigned to Human Brown Grocery Company, which, on the 17th of July, 1905, assigned the lease to John Jacob Brown of New York, who sub-leased the land on January 1, 1907, to the Mayfield Grocery Company. John Jacob Brown then assigned the lease to Mrs. J. B. Brown.

Lease No. 602, to Swift & Company, of a site for a cold storage plant at San Antonio, Texas; dated October 1, 1902, running for a period of twenty years, with privilege of renewal. This lease was assigned on November 18, 1908, to Swift & Company, a Delaware corporation.

Leases Nos. 615, 693 and 1418. All of these leases are to the same property under different conditions, being lease to the Moore-Star Mayfield Company at Palestine, dated January 20, 1899, and running for a period of ten years, with privilege of renewal. This lease was transferred to Star, Hartnett & Edmonston on January 20, 1903, and Star, Hardnett & Edmonston transferred same to the Ezell Grocery Company about January 20, 1906, and the Ezell Grocery Company assigned the lease to the Moore Grocery Company about January 13, 1909.

Lease No. 621, to F. W. Madden, of site for oil mill at Taylor; dated July 30, 1898, running for a period of twenty-five years, which was extended to a period of forty-five years, dating from July 30, 1898.

Lease No. 665, to National Coffee & Manufacturing Co., of a site for a coffee plant at Houston, Texas; dated March 21, 1903, and running for a period of twenty-five years.

Lease No. 693 (see 615, 1418), to Ezell Grocery Company at Palestine, of site for a warehouse at Palestine;

dated January 20, 1903, running for a term of six years, with privilege of renewal.

Lease No. 899, to Navasota Compress Company, of site for a compress at Navasota, Texas; dated September 22, 1902, running for ninety-nine years.

Lease No. 921, to Western Grocery Company, of warehouse site at San Antonio; dated February 1, 1905, for twenty-five years, with privilege of renewal.

Lease No. 928, to Cardz Milling Company at Austin, Texas. Lease of a mill site; dated February 14, 1905, running for ninety years, with privilege of renewal; said lease was assigned by Cardz Milling Company to Henry Cardz October 30, 1906.

Lease No. 690, to J. W. Shipman, of warehouse site at Jacksonville; dated May 6, 1905, running for a period of ten years, with privilege of renewal.

Lease No. 1019, to Industrial Cotton Oil Company, of site for oil mill at Hearne; dated May 24, 1905, for ten years, with privilege of renewal.

Lease No. 1028, to Texas Company, of site for oil tanks at Houston, Texas; dated July 31, 1905, running for a period of twenty years.

Lease No. 1051, to Sames-Moore & Co., of warehouse site at Laredo; dated June 1, 1905, running for twenty-five years, with privilege of renewal.

Lease No. 1071, to Pintsch Gas Company, of site for a gas plant at San Antonio; dated October 31, 1901, good for twenty-five years, with privilege of renewal.

Lease No. 1092, to Star Grocery Company, of warehouse site at Jacksonville; dated March 1, 1906, and good for twenty-five years.

Lease No. 1128, to the Texas Company, of site for oil tanks at San Antonio; dated October 31, 1907, and good for twenty-five years.

Lease No. 1116, to Henry Ash, of warehouse site at Palestine; dated January 10, 1899, good for ten years, with privilege of renewal.

Lease No. 1127, to Taylor Can & Pickle Company, of

site for canning factory at Tyler, Texas, dated December 30, 1906, running for twenty years, with privilege of renewal.

Lease No. 1116, to Walter Tipps, of warehouse site at Austin; dated September 5, 1906, running for twenty-five years.

Lease No. 1169, to Farmers Union Gin Company, of site for a gin plant at Round Rock; dated December 2, 1906, for ten years, with privilege of renewal for five years.

Lease No. 1170-1261, to the American Coffee Company, of site for a coffee roaster and for storage of commodities in coffee business at Houston, running for a term of eighteen years. This lease was assigned to W. H. Rogers on July 29, 1908. Said lease marked canceled.

Lease No. 1189, to Wm. Volke & Company, of site for factory and warehouse at Houston, Texas; dated January 1, 1907, and running for thirty years.

Lease No. 1205 (see 592), to Mayfield Grocery Company, of site for warehouse at Tyler; dated January 1, 1907, running twenty years, with privilege of renewal, being the same property as Lease No. 592 above described.

Lease No. 1209, to H. E. Piper, of site for ice and electric light plant at Hearne, Texas; dated January 17, 1907, and running for twelve years.

Lease No. 1216, to Henderson Lumber Planing Mill, of site for a planing mill at Henderson, Texas; dated April 28, 1907, and running for a term of twenty-six years.

Lease No. 1302, to Otto Wahrmund, of site for saloon at Austin, Texas; dated December 14, 1907, for a period of ten years.

Lease No. 1310, to the Houston Rice Milling Company, of site for rice mill at Houston, Texas; dated August 9, 1907, for a period of ninety-four years.

Lease No. 558, to the Houston Rice Milling Company, of site for rice mill at Houston, Texas; dated April 1, 1902, for ninety-nine years.

Lease No. 1313, to Sames-Moore & Company, of site for brick yard at Laredo; dated July 19, 1907, for a period of ten years.

Lease No. 1329, to Derby Brothers, of site for brick yard at Laredo; dated August 20, 1907, for twelve years. This lease was assigned to Derby Brick Manufacturing Company.

Lease No. 1339, to Sames-Moore & Company, of site for brick yard at Laredo; dated October 29, 1907, for a period of ten years.

Lease No. 2252 (see 1092), to Star Grocery Company, of site at Jacksonville, Texas, for a wholesale grocery business, running for a term of twenty-five years; dated 1st day of March, 1906.

Verbal lease, made several years since, with the Mart Compress Company for site on which to erect cotton compress at Mart. Said compress company has refused to sign the written lease when presented to it, and has now been holding said property for a considerably longer period than one year without having any written lease authorizing it to do so.

Verbal agreement for spur track made with Mart Compress Company, some time since, the said compress company having refused to sign the written agreement for spur track when presented to it. Said spur track to be used in connection with the compress of the Mart Compress Company erected on land of railway at Mart, Texas.

Any agreement or agreements claimed to have been made by the International and Great Northern Railroad Company, or by the Houston and Great Northern Railroad Company, or by the International Railroad Company, or by any of the companies composing the International and Great Northern Railroad Company, or by any other corporation under which it holds or whose rights it has acquired by consolidation or otherwise, or by any receiver of any of said companies, or by any person purporting to act for them or any of them, whereby said companies, or any of them, or any receiver, is



claimed to have made any agreement with reference to establishing or maintaining the general offices, public offices or principal offices, machine shops, roundhouses, or any other structures at Palestine, Texas. The assign of the purchaser of the franchises and property of the International and Great Northern Railroad Company, to wit, International and Great Northern Railway Company, denies that any such contract or agreement was ever made; but in the event any such contract or agreement was made, the Railway Company, filing this election, hereby expressly elects not to assume or adopt same, but on the contrary said Railway Company hereby repudiates same, and elects not to assume same and not to be bound thereby.

The contract entitled "Joint Track Contract between the International & Great Northern Railroad Company and the Missouri, Kansas & Texas Railway Company of Texas," dated December 21, 1905, granting to the Missouri, Kansas & Texas Railway Company of Texas certain trackage rights over that part of the line of the International and Great Northern Railroad Company extending from the City of Austin in Travis County to San Marcos in Hays County, including the bridge of the International and Great Northern Railroad Company across the Colorado River, as well as all other bridges constituting parts of the line of railroad of the said International and Great Northern Railroad Company between the Cities of Austin and San Marcos, for the purpose of running and operating the trains, engines and cars, loaded and empty, of the Missouri, Kansas & Texas Railway Company of Texas thereover, upon certain terms and conditions named in said written contract; said contract being signed on behalf of the International and Great Northern Railroad Company by George J. Gould, its President, and on behalf of the Missouri, Kansas & Texas Railway Company of Texas by Henry C. Rouse, its President.

It is expressly understood that the said International

and Great Northern Railway Company, by filing this notice of its election not to assume or adopt the leases and contracts, or alleged leases and contracts, above set forth, does not mean that any lease or contract not by it above listed is by it adopted or assumed, but that the said Railway Company may, from time to time, within the period allowed by the order of sale before named, file in this court and in this proceeding a description of other leases or contracts which it may elect not to assume.

Said International and Great Northern Railway Company also elects not to assume the following leases and contracts:

Lease No. 915 (see 535), to Wm. Basse Hardware Company, of a site for a warehouse at San Antonio, dated February 15, 1905, and running for a period of seven years, with privilege of renewal.

Lease No. 1246, to Rusk County Planing Mill Company, of a tract of land for a planing mill at Henderson; dated on or about March 20, 1907, and extending for a period of ten years.

Lease No. 1257, to the Pruitt Commission Company, of a warehouse site at San Antonio; dated December 1, 1906, and running for a term of ten years.

Contract No. 2224, between the International and Great Northern Railroad Company and the Gulf Colorado and Santa Fe Railway Company, for use of tracks of the International and Great Northern Railroad Company between Houston and Conroe by the Santa Fe Railroad Company, and for use of tracks of the Santa Fe Railway Company between a point just north of Navasota River Bottom and Conroe; said contract being executed on behalf of the International and Great Northern Railroad Company by L. Trice and on behalf of the Gulf Colorado and Santa Fe Railway Company by L. J. Polk, on the 20th day of August, 1901.

Contract between the International and Great Northern Railroad Company and the Western Union Telegraph

Company; dated September 16, 1882, and executed by the Western Union Telegraph Company by John Van Horn, Vice-President, and by the Missouri Pacific Railway Company as the duly authorized representative of the International and Great Northern Railroad Company, the Galveston, Houston and Henderson Railway Company, and the Missouri, Kansas and Texas Railway Company, and the St. Louis, Iron Mountain and Southern Railway Company; and a supplement thereto, adopting the contract as executed by the Western Union Telegraph Company and the Missouri Pacific Railway Company, being signed by the St. Louis, Iron Mountain and Southern Railway Company and the Missouri, Kansas and Texas Railway Company and by the International and Great Northern Railroad Company, and by the Galveston, Houston and Henderson Railway Company; said contract providing for use of the wires of the Western Union Telegraph Company on the line of the International & Great Northern Railroad Company, and of other roads mentioned therein, and providing for other matters in relation to the telegraph wires and lines along said railroad and the other railroads named in said contract; all of which matters are set out fully in the contract referred to.

INTERNATIONAL AND GREAT NORTHERN  
RAILWAY COMPANY

by THOMAS J. FREEMAN,

Its President.

WILSON & DABNEY

*Attys.*

(SEAL)

Attest:

H. B. HENSON,

*Assistant Secretary.*

## EXHIBIT "O."

UNITED STATES DISTRICT COURT, NORTHERN  
DISTRICT OF TEXAS.

THE MERCANTILE TRUST COMPANY, TRUSTEE,  
THE FARMERS' LOAN AND TRUST COM-  
PANY, TRUSTEE, GEORGE J. GOULD, ET AL.,  
*Complainants,*

VERSUS

CONSOLIDATED CAUSE  
No. 2501.

INTERNATIONAL AND GREAT NORTHERN RAILROAD  
COMPANY,

*Defendant.*

THE FARMERS' LOAN AND TRUST COMPANY, TRUSTEE,  
*Complainant,*

VERSUS

EQUITY CAUSE  
No. 2514.

INTERNATIONAL AND GREAT NORTHERN RAILROAD  
COMPANY, THE MERCANTILE TRUST COM-  
PANY AND THOMAS J. FREEMAN, AS RE-  
CEIVER OF THE INTERNATIONAL AND  
GREAT NORTHERN RAILROAD COMPANY,

*Defendants.*

January 30, 1912.

*To the Judge of the County Court of Anderson County  
and to the Commissioners of Anderson County, Texas:*

PLEASE TAKE NOTICE that International and Great Northern Railway Company is the assign of the purchaser at the sale under the decree of foreclosure entered by the United States Circuit Court for the Northern District of Texas on or about May 10, 1910, in a certain cause therein pending wherein The Farmers' Loan and Trust Company, Trustee, is complainant and International and Great Northern Railroad Company and others are defendants, and is the owner of all the railroads, property and franchises sold at said sale and conveyed to this Com-

pany by deed of the Master Commissioner appointed by said decree, and others, which said deed was delivered to this Company on or about September 16, 1911, and that this Company is advised that claim is made to the effect that a contract or agreement was heretofore made by International and Great Northern Railroad Company or by Houston and Great Northern Railroad Company, or by some other corporation or corporations, or by some receiver or receivers of some corporation or corporations, whereby it was agreed that the general offices, public offices or principal offices, machine shops, roundhouses or other structures, should be established or maintained at Palestine, Texas.

The International and Great Northern Railway Company hereby denies that any such contract or agreement was ever made; and, in the event any such contract or agreement was made, International and Great Northern Railway Company hereby expressly elects not to assume or adopt the same, but, on the contrary, repudiates the same and elects not to be bound thereby.

Pursuant to the above-mentioned decree of foreclosure International and Great Northern Railway Company filed on December 13, 1911, with the Clerk of the United States Circuit Court for the Northern District of Texas, at Dallas, Texas, in the cause above mentioned, a notice of the election of said company not to assume certain described contracts or leases, and certain alleged contracts or leases, including the alleged contract above mentioned.

INTERNATIONAL & GREAT NORTHERN  
RAILWAY COMPANY,  
By THOMAS J. FREEMAN

President.

Attest:

A. R. HOWARD  
Secretary.

(SEAL)

## EXHIBIT "P."

UNITED STATES CIRCUIT COURT, NORTHERN  
DISTRICT OF TEXAS.

THE MERCANTILE TRUST COMPANY, TRUSTEE,  
THE FARMERS' LOAN AND TRUST COM-  
PANY, TRUSTEE, GEO. J. GOULD, ET AL.,

*Complainants,*

VERSUS

CONSOLIDATED CAUSE  
No. 2501.

INTERNATIONAL AND GREAT NORTHERN RAILROAD  
COMPANY,

*Defendant.*

THE FARMERS' LOAN AND TRUST COMPANY, TRUSTEE,  
*Complainant,*

VERSUS

EQUITY CAUSE  
No. 2514.

INTERNATIONAL AND GREAT NORTHERN RAILROAD  
COMPANY, THE MERCANTILE TRUST COM-  
PANY AND THOMAS J. FREEMAN, AS RE-  
CEIVER OF THE INTERNATIONAL AND  
GREAT NORTHERN RAILROAD COMPANY,

*Defendants.*

January 30th, 1912.

*To the Mayor and City Council of the City of Palestine,  
Texas:*

Then followed the notice the same as that addressed to  
the County.

## EXHIBIT "Q."

AT A CIRCUIT COURT OF THE UNITED STATES  
OF AMERICA, IN AND FOR THE FIFTH CIR-  
CUIT IN THE WESTERN DISTRICT OF  
TEXAS, HELD AT THE COURT HOUSE  
IN THE CITY OF AUSTIN.

JOHN A. STEWART AND WM. H. OSBORNE, TRUSTEES,  
*Complainants,*

VS.

IN EQUITY.  
No. 138.

THE INTERNATIONAL RAILROAD COMPANY; THE IN-  
TERNATIONAL AND GREAT NORTHERN RAIL-  
ROAD COMPANY, JOHNS S. BARNES AND  
THOMAS W. PEARSALL, TRUSTEES, ETC.,  
MOSES TAYLOR AND WILLIAM E. DODGE,  
TRUSTEES, ETC.,

*Defendants.*

This cause coming on to be heard at this term of the Court upon the bill of complaint of the said complainants, the exhibits, answers and proofs, solicitors for all parties now consenting in open court that this cause may now be heard and determined;

Now the Court after hearing the counsel of the said parties, and the evidence, and having considered thereof, and having had due deliberation of and concerning the same, it is thereupon, on this 15 day of April ordered adjudged and decreed, and this Court by virtue of the power and authority in it vested, doth order, adjudge and decree as follows, to-wit: that all the material facts set forth in said Bill of Complaint are true.

First. That the mortgage or deed of trust bearing date the first day of April, one thousand eight hundred and seventy one, set up in the bill of complaint and appearing thereby, and by the proofs in this case, to have been executed by the defendant, The International Railroad Company, as party of the first part thereof to John A. Stewart and William H. Osborne as trustees, parties



of the second part thereof, was a valid conveyance by way of mortgage of the property therein described, to the said trustees, who are the complainants in this cause; was duly recorded in the several counties in the State of Texas in which the property covered by the said mortgage or deed of trust is situated, as alleged in said bill of complaint.

Second. It is further ordered adjudged and decreed, that there were issued and are now outstanding of the bonds secured by the said mortgage as follows: Four thousand two hundred and twenty four bonds, for one thousand dollars each, dated the first day of April, one thousand eight hundred and seventy one, and payable in United States gold coin on the first day of April, one thousand nine hundred and eleven, and bearing interest at the rate of seven per centum per annum, payable semi-annually in gold coin.

Third. It is further ordered adjudged and decreed, that the defendant, The International and Great Northern Railroad Company, is the successor and assignee of the said mortgagor, the International Railroad Company, and has assumed the obligations of the said International Railroad Company, including the payment of the principal and interest of all the said bonds hereinbefore mentioned.

Fourth. It is further ordered adjudged and decreed, that there are due to the complainants in this cause, and to the holders of the bonds or coupons secured by the mortgage or deed of trust, the following sums by way of interest and principal of said bonds and coupons: 1. Unpaid coupons upon eighty of said bonds; which coupons matured April 1st, 1875, and interest thereon to April 1, 1879. 2. Unpaid coupons upon 3184 of said bonds, which coupons matured April 1, 1875, less the sum of \$19.60 paid on account of each of said coupons, amounting to \$62,406.40 and interest thereon to April 1, 1879.

3. Unpaid coupons on 3264 of said bonds, which cou-

- pons matured October 1, 1875, and interest thereon to April 1, 1879.
4. Unpaid coupons on 3264 of said bonds, which coupons matured April 1, 1876, and interest thereon to April 1, 1879.
  5. Unpaid coupons on 3264 of said bonds, which coupons matured October 1, 1876, and interest thereon to April 1, 1879.
  6. Unpaid coupons on 3264 of said bonds, which coupons matured April 1, 1887, and interest thereon to April 1, 1879.
  7. Unpaid coupons on 4224 of said bonds, which coupons matured October 1, 1877, and interest thereon to April 1, 1879.
  8. Unpaid coupons on 4224 of said bonds, which coupons matured April 1, 1878, and interest thereon to April 1, 1879.
  9. Unpaid coupons on 4224 of said bonds, which coupons matured October 1, 1878, and interest thereon to April 1, 1879.
  10. Unpaid coupons on all of said bonds which coupons matured April 1, 1879.
  12. Principal money named in the said bonds amounting to the sum of Four millions two hundred and twenty four thousand dollars, (\$4,224,000) payable in gold coin of the United States, which principal, upon default in the payment of interest in accordance with the terms of the mortgage, became due and payable on the first day of April, 1875, making due in the aggregate, for principal and interest, on the first day of April, 1879, upon the said bonds from the defendant, the International Railroad Company and its successor the International and Great Northern Railroad Company, to the complainants as trustees, the sum of Five millions, four hundred and fifty seven thousand, six hundred and seventy eight dollars and twenty cents, (\$5,457,678.20) in gold coin of the

United States not including, however, the said sum of \$62,406.40, heretofore paid as interest to certain holders of certificates or scrip, issued for certain unpaid coupons, which interest is properly deductible by the said trustees from the amount of interest, that would otherwise be due and payable to the parties respectively who received the said sum.

and that the said defendants, the International Railroad Company and the International and Great Northern Railroad Company, are severally chargeable with, and the complainants are entitled to collect from the said companies and from the said mortgaged premises herein detailed and directed to be sold, interest on the sum of five millions, four hundred and fifty seven thousand, six hundred and seventy eight dollars and twenty cents, (\$5,457,678.20) hereinbefore mentioned from the first day of April, 1879, together with the charges, expenses, costs and allowances herein mentioned and provided for; and also the amount of lawful compensation and commissions to the complainants as trustees, and to the Receiver in this cause, including the charges of attorneys, solicitors and counsel employed by such trustees and said receiver, to be ascertained as hereinafter directed, and also including the expenses of executing this decree.

Fifth. It is further ordered, adjudged and decreed that the railroad equipment and property, described in and intended to embraced in the said mortgage or deed of trust, included all and singular, said International Railroad Company's railway: its Jefferson branch, whenever built, and its main trunk; its right of way and track, together with all superstructures, depots, depot-grounds, stations, station house, engine houses, car houses, freight houses, wood houses, sheds, watering places, work shops, machine shops, bridges, tools, machinery, side tracks, turnouts, turntables, weighing scales, fixtures, locomotives, tenders, rolling stock, fuel, equipments, and all corporate rights, privileges and franchises of the said In-

ternational Railroad Company including the franchise of the Company to be a corporation, which the said International Railroad Company possessed on the first day of April, 1871, or which it afterwards acquired and which are necessary, material and useful in connection with the ownership, use or operation of the aforesaid railroad.

Sixth. It is further ordered, adjudged and decreed, by this Court, that the defendants in this action, and each and every one of them, and all persons claiming or who may claim from or under them, or either of them, subsequent to the filing of the Bill of Complaint herein, by debt, judgment or decree, or otherwise be, and they hereby are forever barred and foreclosed of and from all equity of redemption, right, estate, demand, lien, title, interest and claim of, in and to the said mortgage premises herein described and ordered to be sold, and every part and parcel thereof, except as herein stated, unless within twenty days from the date of the entry of this decree, the defendant, the International and Great Northern Railroad Company, or some one or more of the other defendants, shall in redemption of said property, pay into this Court the said sum of five millions, four hundred and fifty seven thousand six hundred and seventy eight dollars and twenty cents (\$5,457,678.20) in gold coin of the United States, with interest thereon from April 1, 1879, together with the amount of liabilities incurred by the Receiver, heretofore appointed in this cause, in the management and protection of the property in his hands, as such receiver, and also all the costs, fees, allowances and compensation herein provided for, and costs and disbursements incurred in and about the sale, hereinafter directed, up to the time of such payment, but the party so redeeming shall be allowed for any sum or sums which may hereafter and before said redemption be paid on account of said principal or interest.

That if no such payment be made, all and singular, the said premises and property and all other property of the said Railway Company covered by and included in the

said mortgage to the complainants, and not herein specially excepted, be sold for the purpose of satisfying or collecting the said several sums, and each and every part thereof, and as hereinafter directed, at public auction, at the Court house of Travis County, in the City of Austin, in the State of Texas, under the direction of Burr G. Duval, Esqr., Master, to whom it is referred for that purpose, and that a prior notice of at least sixty days be given of the time, place and terms of said sale, and of the specific property (as nearly accurate as practicable) to be sold, and that such notice shall be published in two newspapers of good circulation in the City of Austin, and in one or more newspapers in the City of New York.

Seventh. And it is further ordered adjudged and decreed:

1. That the said mortgaged property herein directed to be sold, be sold in one parcel and as one property, at one and the same sale, the same being, in the opinion of the Court, incapable of being sold in separate parcels, without material injury to the value thereof.

2. That the said mortgaged premises shall not be sold at such sale for any sum less than five hundred thousand dollars, (\$500,000.) in gold coin of the United States, and that if no bid of that amount be offered, the said Master shall adjourn the sale from time to time until the further order of this Court.

3. That of the whole of the purchase money, not less than twenty five thousand dollars shall be paid in gold coin, at the time of the sale, and on the delivery of the deed so much of the total purchase money shall be paid as shall be necessary to pay and discharge any obligations, liabilities or indebtedness of the said receiver, and there shall also be paid so much of said purchase money, as shall be necessary to pay and discharge all unpaid taxes, upon the said mortgaged premises, and all the costs, fees, allowances, compensations and commissions herein provided for, as well as all the expenses of said sale, and the said Master shall cause a statement of the

amount of money required for the said purpose, to be prepared as nearly accurate as practicable, and shall have the total amount thereof announced at the said sale and submit such statement for inspection.

4. That for the remainder of the purchase money, above the said sum of Twenty five thousand dollars, the said Master may receive, except as above stated, any of the past due coupons and any of the bonds secured by the aforesaid mortgage, set forth in the bill of complaint, such coupons and bonds being received for such sum as the holder thereof would be entitled to receive under the distribution herein ordered and according to the priorities herein adjudged.

5. That the said Master forthwith after such sale make a report thereof to this Court, and after the confirmation of said sale by the Court, shall execute a deed to the purchaser or purchasers of the said mortgaged property, on their complying with the conditions on which said sale is made, and that such sale be valid and effectual forever.

Eighth. It is further ordered adjudged and decreed: that after the confirmation of the sale and delivery of the deed, the purchaser or purchasers of said property so to be sold, be let into the possession, use and enjoyment thereof and that any of the parties to this action, who may be in possession of the premises or property or any part thereof, and any person who, since the commencement of this action, has come into possession thereof, or of any part thereof, under the said defendants, or either of them, and the receiver of this court, who may be in possession or have control of the same or any part thereof, under or by virtue of any order of this Court, heretofore made, or hereafter to be made in this action prior to the sale, shall, after the passing of his accounts, deliver and surrender possession to such purchaser or purchasers, on the production of the said Master's deed, or other proper evidence of the sale and purchase of said franchises premises and property.

Ninth. And it is further ordered adjudged and decreed, that such purchaser or purchasers shall thereupon be fully vested with and shall have, hold, possess and enjoy the said franchises, property and premises so sold in pursuance of this decree, with all the rights and privileges pertaining thereto, as fully and completely as the said defendant, the International Railroad Company, was at the date of said mortgage, or the said defendant, the International Railroad Company, or the International and Great Northern Railroad Company, its successor, has at any time since been invested with, or has held, possessed or enjoyed.

Tenth. And it is further ordered, adjudged and decreed, that the said Master, after retaining from the proceeds of the sale hereby directed to be made, the amount of his own fees and the expenses of executing this decree, shall pay out of the said net proceeds of such sale as follows; that is to say:

To the solicitors of the complainants in this cause their costs and disbursements to be taxed and such sums as shall be allowed in addition to costs, including therein such sum as shall be allowed complainants herein for their commissions, compensation and services in and about their trust.

To the solicitors of the complainants such counsel fees and expenses as the complainants or either of them may incur or become liable for in executing this decree, and the said Master is hereby ordered to ascertain upon notice to and hearing of the respective parties and upon proofs taken, and report, at least ten days before the sale of the said property to this Court what would be a reasonable allowance to the complainants for their services, expenses and outlay, including attorneys and counsel fees in regard to their trust, and also the proper compensation, to the said receiver and his solicitors, attorneys and counsel, and that the complainants and the said receiver file a statement of the said claims with the said Master, within thirty days after the entry of this decree,



or be precluded from the benefit thereof, and that the amount specified in the Master's report when confirmed by the Court be added to the amount with which the said International Railroad Company and the International and Great Northern Railroad Company and the said mortgaged property are chargeable.

Eleventh. And it is further ordered, adjudged and decreed, that the said Master shall then pay and discharge all unpaid taxes upon the premises so sold which have accrued prior to the day of such sale.

Twelfth. And it is further ordered, adjudged and decreed, that the said Master shall then next pay and discharge all obligations which may have been incurred by the said receiver under the orders of the Court herein, with the accrued interest thereon; and with the remaining amount, if any, of the proceeds of the said sale, the said Master shall then, for the further satisfaction of the bonds, coupons and balance of interest secured by the Complainant's deed of trust, in the nature of a mortgage, pay, in gold coin of the United States or its equivalent, to the several and respective holders of the bonds issued under the said first mortgage, and outstanding and unpaid, and to the holders of the remaining unpaid coupons, the principal amount of said bonds and coupons, together with interest due on the said coupons from the time they respectively became due and payable, until payment in full, if the said balance shall be sufficient therefor; and if not, then such payment shall be made ratably, in proportion to the principal, amount of said bonds and coupons, provided that such holders shall surrender to the said Master such bonds and coupons, if paid in full, to be cancelled and, if not paid in full, the said Master shall indorse on said bonds and coupons a suitable receipt for the amount in fact paid.

If there shall be any surplus money remaining of the aforesaid proceeds of sale, after the payment in full of the several amounts hereinbefore directed and allowed to be paid, then the said Master shall bring the same into

court with his report of sale, to abide the further order of this Court touching the same. And the said Master shall take and bring into Court, with his report, proper receipts and vouchers for all his payments and expenses.

Thirteenth. And it is further ordered, adjudged and decreed that if there shall be any deficiency in the amount required to be paid, in full of the amounts hereinbefore recited and allowed to be paid, then the said Master shall specify the aggregate amount of such deficiency in his report for sale.

Fourteenth. The description of the real estate and other property to be sold under and by virtue of this judgment so far as the same has been ascertained from the first mortgage and bill of complaint and proofs and exhibits herein is as follows:

All and singular the said International Railroad Company's railway; its Jefferson branch, whenever built, and its main trunk; its right of way and track, together with all superstructures, depots, depot grounds, stations, station houses, engine houses, car houses, freight houses, wood houses, sheds, watering places, workshops, machine shops, bridges, tools, machinery, side tracks, turnouts, turntables, weighing scales, fixtures, locomotives, tenders, rolling stock, fuel, equipments, and all corporate rights, privileges and franchises of the said International Railroad Company, together with all and singular the reversion and reversions, remainder and remainders, tolls, rents, incomes, issues and profits thereof including the franchise of the Company to be a corporation, which the said International Railroad Company possessed on the first day of April, 1871, or which it afterwards acquired and which are necessary, material and useful in connection with the ownership, use or operation of the aforesaid railroad, including listed rolling stock.

Fifteenth: It is further ordered, adjudged and decreed, that said master keep all monies and securities received from said property, including the bonds and coupons aforesaid on deposit in the City Bank of Houston

at Houston subject to his own order as such Master in this cause, such monies however to be drawn by him only for the purposes of this decree and by checks countersigned by the Judge of the United States District Court for the Western District of Texas; that no payment be made out of the surplus income of said road or the proceeds of the sale except upon and pursuant to such orders as this Court may hereafter make for that purpose; that the said master shall make report to this court of all he shall do under and by virtue of this decree and which he is not hereinbefore required to report specially, with all convenient speed; and as to such bonds and coupons as he shall receive on account of the amount paid on said sale, if the same be not paid in full, he is to endorse upon the same the amount at which they are received by him.

Sixteenth: It is also hereby referred to the said master to pass the accounts of the receiver herein before appointed in this cause up to the day of sale.

Seventeenth: And it is further ordered, adjudged and decreed that within fifteen days after the making of such sale the said receiver file his account with the said master, and give notice of the filing to the solicitors for the parties who have appeared in this cause, and thereupon, upon any party filing objections to such account the said master do proceed to audit and adjust said account and the objections thereto and to report his audit and the accounts as adjusted by him to this court; that on obtaining a confirmation of the said report, if it appear by the same as confirmed, that any balance of money is in the hands of the receiver, or that he is chargeable in favor of the complainants or others entitled to any money under this decree with any balance of money, then he shall forthwith upon the confirmation of such report pay such balance into such City Bank of Houston, subject to the order of the said master, to be by him drawn in the same manner as hereinbefore provided as to the proceeds of the said sale, and to be by said master appro-

priated and distributed in the same manner and for the same purposes as the cash proceeds of such sale.

Eighteenth. And it is further ordered, adjudged and decreed, that any of the parties to this action may become a purchaser of said mortgaged premises at the said sale.

Nineteenth. And it is further ordered, adjudged and decreed, that if any party to this action may apply to this court for such other and further directions as may be necessary to carry this decree into effect, and it is hereby referred to the said master to pass the accounts of the said receiver and report thereon and for that purpose the said receiver is directed to attend before him at such time and place as may be designated by said master by his order or summons for that purpose to file his account under oath and produce his books, papers and vouchers, and either party may except to the master's report upon the matters hereby referred to him and may bring such exceptions to hearing upon due notice and so far as the computations, audits and allowances made by the master shall be passed upon by the Court, the same shall take effect as if now incorporated in and passed upon by this court, except that for the purpose of appeal growing out of the matters so reserved the time of appeal shall run from the date of confirmation of the report and all further directions and equities are reserved.

(Signed)

W. B. Woods,  
*U. S. Circuit Judge,*  
T. H. Duval,  
*U. S. District Judge.*

April 15, 1879.

**EXHIBIT "R."**  
**IN THE CIRCUIT COURT OF THE UNITED**  
**STATES FOR THE WESTERN**  
**DISTRICT OF TEXAS,**  
**AT AUSTIN.**

John A. Stewart and  
 William H. Osborn, Trustees,  
*Complainants,*

vs. No. 138 IN EQUITY.

The International Railroad Company and Others,  
*Defendants.*

**DECREE CONFIRMING MASTER'S REPORT**  
**OF SALE.**

And now on this day, the fourth, it being the first Monday of August, Anno Domini One Thousand Eight Hundred and Seventy-nine, all the parties to this suit coming into Court by their solicitors and consenting in open Court that the Report of the Special Master, Burr G. Duval, Esqr., heretofore appointed herein, filed in this Court on the 1st day of August, 1879, be confirmed, without further delay, being a report by the said Special Master of the sale made by him of the International Railroad and its franchises, roads, lands, rolling stock, equipment and other property belonging to the International Railroad Company on the 31st day of July, A. D. 1879, in pursuance of the direction contained, together with other matters in the final decree heretofore rendered in this cause on the 15th day of April, A. D. 1879, and the report of the said Master being duly inspected and examined by the Court and the manner in which the sale was conducted by him having been enquired into by the Court;

And it appearing to the Court that the publication of the notices for said sale was made in accordance with the terms of the deed of trust, on which said final decree was based, and in accordance with the directions contained in the said decree and that said sale was had at the time and place designated in said decree and was, in all

respects, conducted fairly and in accordance with the directions of the said final decree and with the laws of the State of Texas, applicable to the same, and that said property was, after being duly cried, struck off to John S. Kennedy and Samuel Sloan, Trustees, who were the highest and best bidders for the same, for the following sum of money, to-wit: Five Hundred Thousand Dollars in gold coin of the United States and upon the following terms and conditions, to-wit: Twenty-five Thousand dollars in gold coin of the United States, then and there payable in cash, the remaining sum of Four Hundred and Seventy-five Thousand dollars in gold coin of the United States to be paid on the delivery of the Special Master's deed, at the option of said John S. Kennedy and Samuel Sloan, Trustees, the purchasers aforesaid, either in like gold coin or in the bonds and past due coupons, secured by the mortgage on which said final decree was based, to be received for such sums as the holders thereof are entitled to receive under said final decree.

And it appearing to the Court that said sum of Twenty-five Thousand Dollars in gold coin of the United States was paid to said Master by said John S. Kennedy and Samuel Sloan, Trustees, at the time and place of said sale, and is now in the hands of said Master;

And it further appearing to the Court that the Receiver of said property was, at the time of said sale, and still is, in possession of funds sufficient to pay all his obligations, liabilities and indebtedness, and all the said taxes, costs, fees, allowances, compensations, commissions and expenditures and that said funds are properly applicable thereto;

It is, therefore,

#### ORDERED, ADJUDGED AND DECREED

I. That the sale so made be and the same is hereby confirmed.

II. That R. Somers Hayes, Esqr., the receiver appointed in this cause, do pay out of the funds in his hands, to the said Special Master a sum of Twelve hun-

dred dollars (\$1200.00) in full for his fees as agreed upon by the parties hereto, and a further sum—hereafter to be ascertained and passed upon by this Court, for the expenses of said Master in carrying out the directions contained in the final decree in this cause, entered on the 15th day of April, 1879.

And the said Receiver is further directed to pay out of the funds in his hands any other expenses connected with this cause, not heretofore provided for, after the same shall have been passed upon and approved by the Master.

III. That the said Master shall, upon the payment to him by the said bidders, of the said remaining sum of Four Hundred and Seventy-five Thousand dollars, in gold coin of the United States, or in bonds and past due coupons in due proportion, as aforesaid, to the sums which the holders thereof are entitled to receive under said final decree, execute a conveyance, under seal in his name, as Special Master, to said John S. Kennedy and Samuel Sloan, Trustees, and such persons as may be associated with them, if any, their heirs and assigns, reciting in the same the final decree under which said sale was made, and also reciting therein this decree, confirming said sale and granting to and vesting in them, by the said conveyance, all property so purchased and also vesting in them, their heirs and assigns, the road-bed, tracks, franchises, and chartered powers and privileges of the said International Rail Road Company and of the International and Great Northern Rail Road Company, so far as the latter succeeded to the title of said International Rail Road Company granted to them by virtue of their charter, or by any other laws of the State of Texas or of the United States and also vesting in them, their heirs, and assigns, the true ownership of said Road, with all the powers, rights, franchises, privileges and benefits of said International Rail Road Company and International and Great Northern Railroad Company therein, in the same manner and to the same extent as



if the purchasers, above named, and their associates had been the original corporators of the said company and vesting them with the power to operate, construct, complete, repair and work the said Railroad upon the same terms and under the same conditions and restrictions as are imposed by charters of the said Railroad Companies and by the General Laws of the State of Texas, affecting the same.

IV. That the said conveyance of the said Master shall contain, in accordance with the laws of the State of Texas, a provision to the effect that the sale of said road-bed, tracks, franchises and chartered rights, above set forth, shall not pass or convey to the purchasers above named any right or claim to recover from the former stockholders of the said companies any sums which may remain due upon their subscriptions of stock, but that the said stockholders shall continue liable to pay the same in discharge and liquidation of the debts due by the said companies.

V. That the conveyance of the said Master, so executed by him, in accordance with this decree, shall be witnessed by two competent subscribing witnesses, in the manner required by the laws of the State of Texas, and that, after being so witnessed, the same shall be duly acknowledged for record by the said Master in accordance with the laws of the State of Texas, and thereupon delivered by him, the said Master, to the said purchasers above named, to serve them as the evidence of their title to the said property so conveyed to them.

VI. It is further ordered that, after the said Master shall have executed and delivered to the said purchasers, John S. Kennedy and Samuel Sloan, Trustees, the said deed of conveyance provided herein, and when the said purchasers above named, shall be let into the possession and enjoyment of said property, so conveyed, the said Receiver, after the approval by the said Master of his accounts, shall pay over and account to the said purchasers, for so much of the net earnings of said road as may

remain in his hands after paying and discharging all the costs and charges of every kind against said property, which are justly, under the final decree, and other orders of this Court, chargeable against said property in the hands of the Receiver.

(Signed)

T. H. DUVAL,

*U. S. District Judge and Acting Circuit Judge.*

August 4th, 1879.

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**EXHIBIT "S."**

**DEED**

OF

**BURR G. DUVAL, SPECIAL MASTER, TO JOHN S. KENNEDY AND SAMUEL SLOAN, TRUSTEES.**

Conveying the International Railroad,

Dated October 14th, 1879.

In the Circuit Court of the United States for the Western District of Texas, at Austin.

In Chancery.

**KNOW ALL MEN BY THESE PRESENTS, That,**

**WHEREAS**, in a certain foreclosure suit between John A. Stuart and William H. Osborn, trustees, complainants, and the International Railroad Company, the International and Great Northern Railroad Company, John S. Barnes and Thomas W. Pearsall, trustees, and Moses Taylor and William E. Dodge, trustees, defendants, the said complainants lately in a Circuit Court of the United States in and for the Fifth Circuit and Western District of Texas, in equity, obtained a decree in their favor on the fifteenth day of April, in the year one thousand eight hundred and seventy-nine, whereby Burr G. Duval, a special master of the said Court, was directed, as such special master, to sell all the property hereinafter mentioned at public auction, at the court house of Travis

County, in the city of Austin and State of Texas, to the highest bidder, for the purpose of satisfying certain claims set forth in said decree, together with certain costs and expenses therein mentioned.

AND WHEREAS, The said Burr G. Duval, as special master aforesaid, in obedience to the said decree, did, on the 31st day of July, in the year aforesaid, sell the property hereinafter described, being the same property hereinbefore mentioned, at public auction at the said court house of Travis County, in the city of Austin and State of Texas, having first given notice of the time, place and terms of said sale, and of the specific property (as nearly accurate as possible), to be sold, by publishing such notice for the time required by the said decree, in two newspapers of good circulation, in the city of Austin, to-wit, the "Sunday Leader" and the "Democratic Statesman," and in one newspaper in the city of New York, also of good circulation, to-wit: "The New York Commercial Advertiser," at which sale the said property was struck off and sold to John S. Kennedy and Samuel Sloan, trustees, for the sum of five hundred thousand dollars; they, the said John S. Kennedy and Samuel Sloan, trustees, being the highest bidders, and that sum being the highest sum bidden for the same, and that said John S. Kennedy and Samuel Sloan, trustees, having paid to the said Burr G. Duval, special master, at the time of striking off the sale, and before he accepted their bid, the sum of \$25,000 in gold coin.

AND WHEREAS, The said Burr G. Duval, as such master aforesaid, did, forthwith after such sale, make a report thereon to the said Circuit Court on the first day of August, in the year aforesaid, and an order was duly made by and entered in the said Court on the fourth day of August aforesaid, confirming the said sale.

NOW, THEREFORE, The said Burr G. Duval, as special master aforesaid, for and in consideration of the sum of five hundred thousand dollars to him paid, the receipt whereof is hereby acknowledged, hath granted, bargained,

sold and conveyed, and by these presents doth grant, bargain, sell and convey unto the said John S. Kennedy and Samuel Sloan, as trustees, and to the survivor of them, in fee simple absolute, all and singular the International Railroad Company's railway; its Jefferson branch, whenever built, and its main trunk; its right of way and track, together with all the superstructures, depots, depot-grounds, stations, station-houses, engine-houses, car-houses, freight-houses, wood-houses, sheds, watering-places, workshops, machine-shops, bridges, tools, machinery, side-tracks, turnouts, turntables, weighing-scales, fixtures, locomotives, tenders, rolling stock, fuel, equipments, and all corporate rights, privileges and franchises of the said International Railroad Company, together with all and singular the reversion and reversions, remainder and remainders, tolls, rents, incomes, issues and profits thereof, including the franchise of the Company to be a corporation, which the said International Railroad Company possessed on the first day of April, 1871, or which it afterwards acquired, and which are necessary, material and useful in connection with the ownership, use or operation of the aforesaid railroad, including:

(NOTE: Contained in the deed is a description of rolling stock, by numbers, which is omitted from this copy.)

Which premises are now in the possession and use of and claimed by the said International and Great Northern Railroad Company.

And also all the road-bed, tracks, franchises and chartered powers and privileges of the said International Railroad Company and of the International and Great Northern Railroad Company, so far as the latter succeeds to the title of said International Railroad Company, granted to them by virtue of their charters or by any other laws of the State of Texas or of the United States.

And also all other property of the said railroad company, if any, covered by and included in the mortgage mentioned in the said decree, and all the estate, powers,

right, title, interest, franchises, privileges, benefits, property, possession, claim and demand whatsoever, as well in law as in equity, of the said International Railroad Company and the International and Great Northern Railroad Company, of, in and to the premises aforesaid, and each and every part thereof, with the appurtenances.

To HAVE AND TO HOLD unto the said John S. Kennedy and Samuel Sloan, as trustees, and to the survivor of them, in fee simple absolute forever, as fully as the said International Railroad Company and International and Great Northern Railroad Company, both or either of them were seized of or entitled to, at or before the entry of the decree aforesaid, and in the same manner and to the same extent as if the said John S. Kennedy and Samuel Sloan, trustees, had been the original corporators of the said International Railroad Company, with full power to operate, construct, complete, repair and work the said railroad upon the same terms and under the same conditions and restrictions as are imposed by the charters of the said railroad companies, and by the general laws of the State of Texas affecting the same, and as fully and absolutely as the said Burr G. Duval, master, can, may or ought to, by virtue of the said decree, grant, bargain, sell, release, assign, convey and confirm the same.

But this instrument shall not pass or convey to the said John S. Kennedy and Samuel Sloan, trustees, any right or claim to recover from the former stockholders of the said companies any sums which may remain due upon their subscriptions of stock, but the said stockholders shall continue liable to pay the same in discharge and liquidation of the debts due by the said companies, and no covenant is to be implied from this deed, except that the said Burr G. Duval, as special master aforesaid, has not made any prior conveyance of the property herein mentioned, or any part thereof.

In witness whereof, the said Burr G. Duval, special master in the Circuit Court as aforesaid, hath hereunto

set his hand and seal this fourteenth day of October, one thousand eight hundred and seventy-nine.

BURR G. DUVAL,  
*Special Master.*

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**EXHIBIT "T."**  
**FINAL DECREE.**

At a Circuit Court of the United States of America in  
and for the Fifth Circuit, in the Western District of  
Texas, Held at the Court House in the  
City of Austin.

JOHN S. BARNES and  
THOMAS W. PEARSALL, TRUSTEES,  
*Complainants,*

vs.

IN EQUITY No. 132.

THE INTERNATIONAL AND GREAT NORTHERN  
RAILROAD COMPANY,

*Defendants.*

This cause coming on to be heard at this term of the Court upon the Bill of Complaint of the said Complainants, in the presence of the counsel for the Complainants, and it appearing to the Court that the Defendant, The International and Great Northern Rail Road Company, has heretofore, to-wit on the third day of April, A. D. 1878, been duly served with process of subpoena and that on the second day of July, A. D. 1878, a formal order, taking said Bill for confessed was entered against the said Defendant for failing to plead, demur or answer to said Bill within the time limited by law, and that said order has never been set aside but still remains in full force; and it further appearing that on the 21st day of July, A. D. 1879, an order was granted, referring the said Complainant's Bill and Exhibits to Burr G. Duval, Esqr., Special Master, for a report and the said report has been duly made and filed in said cause, and it ap-

pearing to the Court, from the reading of the Complainant's Bill and exhibits and the report of the Special Master thereon, that the material facts set forth in the Bill are true,

It is Ordered, adjudged and decreed:

First: That the mortgage, or deed of trust, bearing date the fifteenth day of January, One Thousand Eight Hundred and Seventy-four, set up in the Bill of Complaint, and appearing thereby, and by the proofs in this case to have been executed by the International Rail Road Company to John S. Barnes and Thomas W. Pearsall, as Trustees, was a valid conveyance, by way of mortgage, of the property therein described to the said Trustees, who are the Complainants in this cause; and that it was duly recorded in the several Counties in the State of Texas, in which the property covered by the said mortgage or deed of Trust is situated, as alleged in said Bill of Complaint.

Second: That the mortgage or deed of Trust, bearing date the Fifteenth day of January, One Thousand Eight Hundred and Seventy-four, set up in the Bill of Complaint, and appearing thereby and by the proofs in this case, to have been executed by the Houston and Great Northern Rail Road Company to John S. Barnes and Thomas W. Pearsall, as Trustees, was a valid conveyance by way of mortgage of the property therein described to the said Trustees or the complainants in this cause; and the same was duly recorded in the several counties in the State of Texas in which the property covered by the said mortgage or deed of Trust is situated, as alleged in said bill of complaint.

Third: That there were issued and are now outstanding of the Bonds secured by the said mortgages as follows: Twenty-four hundred and forty-eight (2448) bonds for One Thousand dollars (\$1000.) each, secured by the first mentioned mortgage; and Three Thousand and Sixty-two (3062) bonds for One Thousand dollars (\$1000.) and including the first day of August, 1874, to the first



each, secured by the mortgage secondly above mentioned; all the said bonds bearing interest at the rate of Eight (8) per centum, payable semi-annually on the first days of February and August.

Fourth: That the Defendant, the International and Great Northern Rail Road Company is the successor and assignee of each and both of the said mortgagors, the International Rail Road Company and The Houston & Great Northern Rail Road Company, and has assumed the obligation of each and both of the said Companies, including the payment of the principal and interest of all the bonds hereinbefore mentioned.

Fifth: That there are due to the Complainants in this cause, and to the holders of the bonds and coupons secured by the said mortgages or deeds of trust, the sum of Eight Millions Two Hundred and Ninety-seven Thousand Two Hundred and Twenty-six and 97/100 Dollars (\$8,297,226.97) that is to say:

1. The principal of all said bonds amounting in the aggregate to (\$5,510,000) Five Millions Five Hundred and Ten Thousand Dollars.

2. The interest coupons on all of the said bonds, from day of August, 1879; the interest on all of said bonds, since the first day of February, 1874, having been unpaid, which interest amounts in the aggregate to the sum of Two million four hundred and twenty-four thousand, four hundred dollars (\$2,424,400.00).

3. The interest on said overdue and unpaid coupons from the time when they respectively fell due to the first day of August, 1879, which amounts in the aggregate to \$424,270.00; but upon account of which there has been heretofore paid to certain holders of certificates of scrip, issued for a portion of such unpaid coupons \$50,779.40 which should bear interest from November, 1876, which payment and interest aggregate the sum of \$61,443.07, leaving the whole amount of interest on said coupons remaining unpaid \$362,826.93.

Sixth: That by the mortgage or deed of trust first

above mentioned, the said International Railroad Company did grant, bargain, sell, transfer and convey unto the said Jno. S. Barnes and Thomas W. Pearsall, in trust, all and singular the said International Rail Road Company's railway, its Jefferson branch whenever built, and main trunk extending from the Red River to its terminus at or near Laredo on the Rio Grande, its right of way and track, together with all the superstructures, depot, depot grounds, station houses, engine houses, car houses, freight houses, wood houses, sheds, watering places, work shops, machine shops, bridges, tools, machinery, sidetracks, turnouts, turntables, weighing scales, fixtures, locomotives, tenders, rolling-stock, fuel, equipments and all corporate rights, privileges and franchises of said company, whether then held or thereafter to be acquired, together with all and singular, the reversion and reversions, remainder and remainders, tolls, rents, issues, incomes and profits thereof; but the lands, other than those necessary for right of way, depot and shop grounds were not thereby conveyed, nor intended so to be.

Seventh: That by the mortgage or deed of trust, secondly above mentioned, the said Houston and Great Northern Rail Road Company did grant, bargain, sell, transfer, convey and confirm unto the said John S. Barnes and Thomas W. Pearsall, in trust, all and singular the said Company's Railway, built or to be built, its main line, beginning at the Brazos River, passing through the City of Houston, connecting with the Memphis and El Paso Rail Road near Clarksville and passing as near the towns of Montgomery, Huntsville, Crockett, Rusk and Tyler as might be deemed expedient to the Red River, in said State, a distance of about three hundred and fifty (350) miles, and its branches and extensions, including its Huntsville Branch Road, Eight miles in length, together with all right of way, depot and shop grounds, tenements, hereditaments, franchises, and rights, including and meaning to include all the property, real and personal, except the lands other than those necessary for

right of way, depot and shop grounds, then acquired or thereafter to be acquired by said Company in said State of Texas.

Eighth: That by the terms of each of the said Mortgages or deeds of trust, hereinbefore mentioned, there was covered and conveyed an undivided half interest in certain rolling stock and other property, so that by virtue of the two mortgages, or deeds of trust, aforesaid, taken together, the whole and undivided interest in said rolling stock and other property was conveyed to the Complainants as trustees.

Ninth: That the said International Railroad Company and the Houston and Great Northern Rail Road Company and the International and Great Northern Rail Road Company, and each of them, have failed to pay the interest on all of the said bonds, at the time, when the same became due and payable according to the tenor thereof, and that such default, at the time of the commencement of this suit, had continued for more than ninety days after payment thereof had been demanded; and that the holders of a majority of all the outstanding, unconverted and uncanceled bonds of the issue provided for in said mortgage, did, before the commencement of this suit, elect that the principal of all the bonds, secured by each of said mortgages, should be and become immediately due and payable and that the whole principal of said bonds did become due and payable before the commencement of this suit.

Tenth: It is hereby ordered, adjudged and decreed, that, all and singular, the said premises and property and all other property of the said Rail Road Company, covered by and included in the said mortgages to the Complainants, and not herein specially excepted, be sold, for the purpose of satisfying or collecting the said several sums and each and every part thereof, and as hereinafter directed, at public auction at the Court House of Travis County, in the City of Austin, in the State of Texas, under the direction of Burr G. Duval, Esquire, Master, to

whom it is referred for that purpose, and that a prior notice of at least Sixty days be given of the time, place and terms of said sale and of the property to be sold, and that said notice shall be published in two newspapers of good circulation in the City of Austin, Texas, and in one or more newspapers in the City of New York, once in each week during said period of Sixty days.

Eleventh: That the entire premises and property, whether real or personal, conveyed and covered, as hereinbefore stated, by the mortgage or deed of trust, executed by the International Rail Road Company, be sold in one parcel and as one property, at one and the same sale, including the undivided half interest in rolling stock and other personal property hereinbefore mentioned, the same being in the opinion of the Court, incapable of being sold in separate parcels without material injury to the value thereof.

Twelfth: That the entire premises and property, whether real or personal, conveyed and covered, as hereinbefore stated, by the mortgage or deed of trust executed by the Houston and Great Northern Rail Road Company be sold in one parcel and as one property at one and the same sale, including the undivided half interest in rolling stock and other personal property hereinbefore mentioned, the same being in the opinion of the Court, incapable of being sold in separate parcels without material injury to the value thereof.

Thirteenth: That all the property herein directed to be sold, being subject to the prior lien of certain other mortgages, executed by the said Rail Road Companies previously to the execution of the mortgages or deeds of trust for the foreclosure of which this suit was brought, the same shall be sold subject to the sale which was made of such property, by decree of this Court, on the thirty-first day of July, 1879.

Fourteenth: That ten per cent of the whole purchase money shall be paid in lawful money of the United States at the time of sale and said Master shall not, at said sale,

refuse a bid for a less amount than the debt, but he shall sell to the highest bidder without reserve; and on the delivery of the deed, for the remainder of the purchase money above the ten per cent required to be paid in cash, the said Master may receive any of the past due coupons and any of the bonds, secured by the mortgages or deeds of trust executed to the Complainants, as set forth in the bill of complaint; such coupons and bonds being received for such sum as the holder thereof would be entitled to receive under the distribution herein ordered and according to the priorities herein adjudged.

Fifteenth: That the said Master, forthwith, after such sale, make a report thereof to this Court and after the confirmation of said sale by the Court, shall execute a deed to the purchaser or purchasers of the said mortgaged property on their complying with the conditions on which said sale is made and that said sale be valid and effectual forever.

Sixteenth: It appearing to the Court that the Receiver, heretofore appointed herein, is in possession of funds sufficient to pay all his obligations, liabilities, and indebtedness as such Receiver, and all taxes that may be due and unpaid and all costs, fees, allowances, compensation, commissions and expenditures, and that said funds are properly applicable thereto, it is therefore ORDERED

That R. Somers Hayes, Esquire, Receiver herein, do pay out of the funds in his hands

1. To the Complainants, for their services, expenses and outlay, including attorney and counsel fees in regard to their trust, the sum of Thirteen Thousand five hundred Dollars (\$13,500.00) being Thirty-five hundred dollars (\$3500.00) for counsel fees and Ten Thousand dollars (\$10,000.00) for complainants' compensation as Trustees.

- II. That for the said Receiver's own compensation he be authorized to retain, out of the funds in his hands, the sum of One Thousand dollars (\$1000) per month, from the date of his appointment as such Receiver herein, up

to the date of his appointment as Receiver in the causes now pending in this Court, wherein John A. Stewart and Wm. H. Osborne, Trustees, are Complainants, and the International Rail Road Company and others are defendants and Moses Taylor and William E. Dodge are Complainants, as Trustees, and the Houston and Great Northern Rail Road Company and others are Defendants, said causes being numbered respectively 138 and 137, and no longer.

III. That the said Receiver do pay to the said Burr G. Duval, Special Master herein, the sum of Six hundred dollars (\$600.00) in full of his fees as said Master herein, which said compensation has been agreed to by all parties at interest, and a further sum hereafter to be ascertained and passed upon by this Court, for the expenses and disbursements of said Master, in and about this cause and his proceedings therein.

IV. And the said Receiver is further directed to pay out of the funds in his hands any other incidental expenses connected with the proceedings in this cause, not herein provided for, after the same shall have been passed upon and approved by the said Master.

Seventeenth: And with the proceeds of said sale, the said Master shall then, for the further satisfaction of the bonds and coupons secured by the Complainants' deed of trust, in the nature of a mortgage, pay, in lawful money of the United States, to the several respective holders of the bonds issued under the said first mortgages and outstanding and unpaid, and to the holders of the remaining unpaid coupons, the principal amount of said bonds and coupons, together with the interest due on the said coupons from the time they respectively became due and payable, until payment in full, if the said balance shall be sufficient therefor; and if not, then such payments shall be made ratably in proportion to the principal amount of said bonds, coupons and balance of interest, provided that said holders shall surrender to the said Master such bonds and coupons, if paid in full, to

be cancelled, and, if not paid in full, the said Master shall endorse on said bonds and coupons a suitable receipt for the amount in fact paid.

If there shall be any surplus money remaining of the aforesaid proceeds of sale, after the payment in full of the several amounts, hereinbefore directed and allowed to be paid, then the said Master shall bring the same into Court with his report of sale, to abide the further order of this Court, touching the same, and the said Master shall take and bring into Court with his report, proper receipts and vouchers for all his payments and expenses.

Eighteenth: That if there shall be any deficiency in the amount required to be paid, in full of the amounts hereinbefore recited and allowed to be paid, then the said Master shall specify the aggregate amounts of such deficiency in his report of sale.

Nineteenth: That the said Master shall keep all monies and securities received for the said property, including the bonds and coupons aforesaid, on deposit in some safe and suitable depository, subject to his own order as such Master in this cause, such monies, however, to be drawn by him only for the purposes of this decree, and by checks, countersigned by the Judge of the United States District Court for the Western District of Texas; that no payment be made out of the surplus income of said Road or the proceeds of sale, other than those hereinbefore provided for, except upon and pursuant to such orders as this court may hereafter make for that purpose, and that the said Master shall make report to this Court of all he shall do under and by virtue of this decree, and which he is not hereinbefore required to report specifically, with all convenient speed; and as to such bonds and coupons as he shall receive on account of the amount paid on said sale, if the same be not paid in full, he is to endorse upon the same the amount at which they are received by him or authorize some fit and suitable person to do so for him.

Twentieth: That it is also hereby referred to the said



Master to pass the accounts of the Receiver hereinbefore appointed in this cause, up to the day of sale.

Twenty-first: That within fifteen days after the making of such sale, the said Receiver file his account with the said Master and give notice of filing to the solicitors for the parties, who have appeared in this cause and that, thereupon, upon any party filing objections to said account, the said Master do proceed to audit and adjust the said account and the objections thereto, and to report his audit and the account, as adjusted by him, to this court; that on obtaining a confirmation of said report, if it appear by the same, as confirmed, that any balance of money is in the hands of the Receiver, or that he is chargeable, in favor of the Complainants or others, entitled to any money under this decree, with any balance of money, then he shall forthwith, upon confirmation of such report, pay such balance into the City Bank of Houston, Texas, subject to the order of said Master to be by him drawn in the same manner as hereinbefore provided, as to the proceeds of said sale, and to be, by said Master, appropriated and distributed in the same manner and for the same purposes as the cash proceeds of such sale.

Twenty-second: That any of the parties to this action may become a purchaser of said mortgaged premises at the said sale.

Twenty-third: That every party to this action may apply to this Court for such other or further direction as may be necessary to carry this decree into effect. And it is hereby referred to the said Master to pass the account of the said Receiver and report thereon, and for that purpose the said Receiver is directed to attend before him, at such time and place as may be designated by said Master, by his order or summons for that purpose, to file his account under oath and produce his books, papers and vouchers, and either party may except to the Master's report upon the matters hereby referred to him and may bring such exceptions to hearing upon due notice, and so far as the computations, audits and allow-

ances made by the Master shall be passed upon by the Court, the same shall take effect as if now incorporated in and passed upon by this Court, except that for the purpose of appeal, growing out of the matters so reserved, the time of appeal shall run from the date of the confirmation of the report.

And all further directions and equities are reserved.  
(Sgnd)

T. H. DUVAL,

*U. S. Dist. Judge and Acting Circuit Judge.*

August 4th, 1879.

### EXHIBIT "U."

#### IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF TEXAS.

JOHN S. BARNES and

THOMAS W. PEARSALL, TRUSTEES,

*Complainants,*

vs.

No. 132. IN EQUITY.

THE INTERNATIONAL AND GREAT NORTHERN

RAILROAD COMPANY,

*Defendants.*

#### DECREE CONFIRMING MASTER'S REPORT OF SALE.

And now on this day, the Complainants in this cause coming into Court, by their solicitors, Hancock, West & North, and moving the Court to confirm the report of the Special Master, Burr G. Duval, filed herein on the 13th day of October, A. D. 1879, being a report by said Special Master of the sale, by him made, of the entire premises and property, whether real or personal, conveyed and covered by the mortgages or deeds of trust executed by the International Railroad Company and by the Houston & Great Northern Railroad Company to the

said Complainants, in pursuance of the directions contained, together with other matters in the final decree heretofore rendered in this cause, on the fourth day of August, 1879, and the report of the said Master, being duly examined by the Court and the manner in which the sale was conducted by him having been enquired into by the Court:

And it appearing to the Court that the publication of the notices of said sale was made in accordance with the terms of the Deed of Trust on which said final decree was based and in accordance with the directions contained in the said decree, and that said sale was had at the time and place designated in said decree, and was in all respects conducted fairly and in accordance with the directions of the said final decree and with the laws of the State of Texas applicable to the same, and that said property was, after being duly cried, struck off to John S. Kennedy and Samuel Sloan, as Trustees, who were the highest and best bidders for the same, for the following sum of money, to-wit: Ten dollars in cash, which said sum was then and there paid to said Master in full by the said purchasers and is now in his, the said Master's, hands:

It is therefore

**ORDERED, ADJUDGED AND DECREED**

I. That the sale, so made, be, and the same is hereby confirmed.

II. That the said Special Master do execute a conveyance under seal, in his name, as Special Master, to said John S. Kennedy and Samuel Sloan, as Trustees, and such persons as may be associated with them, if any, and to the survivor of them, in fee simple absolute, forever, reciting in the same the final decree under which said sale was made, and also reciting therein this decree, confirming said sale and granting to and vesting in them, by the said conveyance, all the property so purchased and also vesting in them and the survivor of them, in fee simple absolute forever, the road-bed, tracks, fran-

chises and chartered powers and privileges, of the said International Railroad Company, the said Houston & Great Northern Railroad Company, and of the International & Great Northern Railroad Company, so far as the latter succeeded to the title of the two former corporations, granted to them by virtue of their charters or by any other laws of the State of Texas or of the United States, and also vesting in them, and the survivor of them, in fee simple absolute, the true ownership of said roads, with all the powers, rights, franchises, privileges, and benefits of said International Railroad Company, said Houston & Great Northern R. R. Company and said International & Great Northern Railroad Company, therein, in the same manner and to the same extent as if the purchasers above named had been the original incorporators of the said Companies and vesting them with the powers to operate, construct, complete, repair and work the said Railroads upon the same terms and under the same conditions and restrictions as are imposed by the charters of the said Railroad Companies and by the General Laws of the State of Texas affecting the same.

III. That the said conveyance of the said Master shall contain, in accordance with the laws of the State of Texas, a provision, to the effect that the sale of said road-bed, tracks, franchises and chartered rights, above set forth, shall not pass or convey to the purchasers above named, any right or claim to receive from the former stockholders of the said Companies any sums which may remain due upon their subscription of stock, but that the said stockholders shall continue liable to pay the same, in discharge and liquidation of the debts due by the said Companies.

IV. That the conveyance of the said Master, so executed by him, in accordance with this decree, shall be witnessed by two competent subscribing witnesses in the manner required by the laws of the State of Texas, and that after being so witnessed, the same shall be duly acknowledged for record by the said Master in accordance

with the laws of the State of Texas and thereupon delivered by him, the said Master, to the said purchasers above named, to serve them as the evidence of their title to the said property so conveyed to them.

(Signed)

T. H. DUVAL,

*U. S. Dist. Judge, Sitting as Circuit Court Judge.*

October 14th, 1879.

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**EXHIBIT "V."**

**DEED**

OF

**BURR G. DUVAL, SPECIAL MASTER, TO JOHN S. KENNEDY AND SAMUEL SLOAN, TRUSTEES.**

Conveying the International and the Houston and Great Northern Railroads.

Dated October 14th, 1879.

**IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF TEXAS, AT AUSTIN.**

IN CHANCERY.

KNOW ALL MEN BY THESE PRESENTS, that,

WHEREAS, In a certain foreclosure suit between John S. Barnes and Thomas W. Pearsall, trustees, complainants, and the International and Great Northern Railroad Company, defendants, the said complainants lately in a Circuit Court of the United States, in and for the Fifth Circuit in the Western District of Texas, in equity, obtained a decree in their favor on the fourth day of August, in the year one thousand eight hundred and seventy-nine, whereby Burr G. Duval, as a special master of the said Court, was directed, as such special master, to sell all the property hereinafter mentioned at public auction, at the court house of Travis County, in the city of Austin and State of Texas, to the highest bidder, for the

purpose of satisfying certain claims set forth in said decree, together with certain costs and expenses therein mentioned.

AND WHEREAS, The said Burr G. Duval, as special master aforesaid, in obedience to the said decree, did, on the thirteenth day of October, in the year aforesaid, sell the property hereinafter described, being the same property hereinbefore mentioned, in two parcels, as directed by the said decree, at public auction at the said court house of Travis County, in the city of Austin and State of Texas, having first given notice of the time, place and terms of said sale, and of the property to be sold, by publishing such notice for the time required by the said decree, in two newspapers of good circulation, in the city of Austin, to-wit: the "Democratic Statesman" and the "Sunday Leader," and in one newspaper in the City of New York, also of good circulation, to-wit: "The New York Commercial Advertiser," at which sale both parcels of such property were struck off and sold to John S. Kennedy and Samuel Sloan, trustees, for the sum of five dollars for each parcel, making ten dollars in all; they, the said John S. Kennedy and Samuel Sloan, Trustees, being the highest bidders, and that sum being the highest sum bidden for the same, and the said John S. Kennedy and Samuel Sloan, trustees, having paid to the said Burr G. Duval, special master, at the time of striking off the sale, and before he accepted their bid, the said sum of ten dollars.

AND WHEREAS, The said Burr G. Duval, as such master aforesaid, did, forthwith after such sale, make a report thereof to the said Circuit Court on the thirteenth day of October, in the year aforesaid, and an order was duly made and entered in the said Court on the fourteenth day of October, 1879, confirming the said sale.

NOW, THEREFORE, The said Burr G. Duval, as special master aforesaid, for and in consideration of the sum of ten dollars to him paid, the receipt whereof is hereby acknowledged, hath granted, bargained, sold and con-

vayed, and by these presents doth grant, bargain, sell and convey, unto the said John S. Kennedy and Samuel Sloan, as trustees, and to the survivor of them, in fee simple absolute, all and singular the railway of the International Railway Company, its Jefferson branch, whenever built, and main trunk, extending from the Red River to its terminus at or near Laredo on the Rio Grande, its right-of-way and track, together with all the superstructures, depots, depot grounds, station-houses, engine-houses, car-houses, freight houses, wood-houses, sheds, watering places, workshops, machine shops, bridges, tools, machinery, sidetracks, turnouts, turntables, weighing-scales, fixtures, locomotives, tenders, rolling stock, fuel, equipments, and all corporate rights, privileges and franchises of the said International Railroad Company, together with all and singular the reversion and reversions, remainder and remainders, tolls, rents, incomes, issues and profits thereof (not including, however, lands other than those necessary for a right-of-way, depot and shop grounds), and also all and singular the railway of the Houston and Great Northern Railroad Company, built and to be built, its main line, beginning at the Brazos River, passing through the city of Houston, connecting with the Memphis and El Paso Railroad near Clarksville, and passing as near the towns of Montgomery, Huntsville, Crockett, Rusk and Tyler as was deemed expedient, to the Red River in said State of Texas, a distance of about three hundred and fifty miles, and its branches and extensions, including its Huntsville branch road, eight miles in length, together with all right-of-way, depot and shop grounds, tenements, hereditaments, franchises and rights, rolling stock and other property mentioned in the said decree, including and meaning to include all the property, real and personal, at any time acquired by said Company in the State of Texas (except lands other than those necessary for right-of-way, depot



and shop grounds, the same being not hereby conveyed, nor intended so to be); and also, 40 engines, 20 passenger cars, 5 combination cars, 322 freight box cars, 6 baggage, mail and express cars, 2 baggage cars, 377 freight platform cars, 39 service cars, 97 stock cars, 4 caboose cars, 9 boarding cars, 1 car derrick and 1 car pile-driver, and all the roadbed, tracks, franchises and chartered powers and privileges of the said International Railroad Company, the Houston and Great Northern Railroad Company, and the International and Great Northern Railroad Company, granted to them by virtue of their charters, or by any other laws of the State of Texas or of the United States; and all the estate, powers, right, title, interest, franchises, privileges, benefits, property, possession, claim and demand whatsoever, as well in law as in equity, of the said International Railroad Company, the said Houston and Great Northern Railroad Company, and the said International and Great Northern Railroad Company, of, in and to the premises aforesaid, and each and every part thereof, with the appurtenances.

TO HAVE AND TO HOLD, unto the said John S. Kennedy and Samuel Sloan, as trustees, and to the survivor of them forever, in fee simple absolute, as fully as the said International Railroad Company, the said Houston and Great Northern Railroad Company, and the said International and Great Northern Railroad Company, all or any of them, were seized of or entitled to, at or before the entry of the decree aforesaid, and in the same manner and to the same extent as if the said John S. Kennedy and Samuel Sloan, trustees, had been the original incorporators of the three companies aforesaid, with full power to operate, construct, complete, repair and work the said railroads, upon the same terms and under the same conditions and restrictions as are imposed by the charters of the said railroad companies, and by the general laws of the State of Texas affecting the same, and

as fully and absolutely as the said Burr G. Duval, master, can, may or ought to, by virtue of the said decree, grant, bargain, sell, release, assign, convey and confirm the same, subject, however, to the sale of the same property already made on the 31st day of July, 1879, under two decrees of the said Circuit Court, the one decree being in the suit brought by Moses Taylor and William E. Dodge, trustees, complainants, against the Houston and Great Northern Railroad Company and others, defendants, and the other in the suit brought by John A. Stewart and William H. Osborne, trustees, against the International Railroad Company and others, defendants, and subject to the deeds executed pursuant to such sales.

But this instrument shall not pass or convey to the said John S. Kennedy and Samuel Sloan, trustees, any right or claim to recover from the former stockholders of the said companies any sums which may remain due upon their subscriptions of stock, but the said stockholders shall continue liable to pay the same in discharge and liquidation of the debts due by the said companies; and no covenant is to be implied from this deed.

In witness whereof, the said Burr G. Duval, special master in the Circuit Court, as aforesaid, hath hereunto set his hand and seal this fourteenth day of October, one thousand eight hundred and seventy-nine.

BURR G. DUVAL,  
*Special Master.*

**EXHIBIT "W."****IN EQUITY.**

**AT A CIRCUIT COURT OF THE UNITED STATES  
OF AMERICA, IN AND FOR THE FIFTH CIR-  
CUIT, IN THE WESTERN DISTRICT OF  
TEXAS, HELD AT THE COURT  
HOUSE IN THE CITY  
OF AUSTIN.**

April 15, 1879.

MOSES TAYLOR and  
WILLIAM E. DODGE, TRUSTEES,

*Complainants,*

vs.

No. 137. IN EQUITY.

THE HOUSTON AND GREAT NORTHERN RAIL ROAD  
COMPANY,

THE INTERNATIONAL AND GREAT NORTHERN RAIL ROAD  
COMPANY,

JOHN A. STEWART AND WILLIAM H. OSBORN,  
TRUSTEES, ETC.;

R. SOMERS HAYES, RECEIVER;

JOHN S. BARNES AND THOMAS W. PEARSALL,  
TRUSTEES, ETC.,

*Defendants.*

This cause coming on to be heard at this term of the Court upon the bill of complaint of the said Complainants, the exhibits, answers and proofs, solicitors for all parties now consenting in open court that this cause may now be heard and determined.

Now the Court, after hearing the counsel of the said parties, and the evidence and having considered thereof, and having had due deliberation of and concerning the same, it is thereupon, on this 15th day of April, ordered, adjudged and decreed, and this court, by virtue of the power and authority in it vested, doth order, adjudge and decree as follows, to-wit: that all the material facts set forth in said bill of complaint are true.

1. It is further ordered, adjudged and decreed that the

defendant, the International and Great Northern Railroad Company is the successor and assignee of the said Mortgagor, the Houston and Great Northern Rail Road Company, and has assumed the obligations of the said Houston and Great Northern Rail Road Company, including the payment of the principal and interest of all the bonds hereinafter mentioned.

2. That there was on the first day of April, Eighteen hundred and seventy-nine, due, owing and unpaid, on the bonds mentioned and described in the bill of complaint in this cause and intended to be secured by the mortgage described therein, the sum of five millions four hundred and four thousand eight hundred and twenty-seven dollars and seventy-five cents (\$5,404,827.75). That is to say:

The principal of four thousand and eighty-four bonds, made by the Houston and Great Northern Railroad Company, for the sum of One thousand dollars each, bearing date the fifteenth day of February, one thousand eight hundred and seventy two and payable to bearer on the first day of January nineteen hundred, at the office of said Company in the city of New York, In United States Gold coin, with interest at the rate of seven per cent per annum, payable semi-annually on the first days of July and January in each year, in gold, free from all deductions for taxes, until the principal sum be paid, all of which bonds were disposed of by said defendants and are now held by divers owners thereof.

3. That the interest on all of the said bonds was paid in full up to the first day of January one thousand eight hundred and seventy five, and that the interest on all of said bonds since then remains unpaid, which unpaid interest from the date last named till the first day of April eighteen hundred and seventy nine amounts in the aggregate to the sum of one million two hundred and fourteen thousand nine hundred and ninety dollars (\$1,214,990).

4. That the interest on said overdue and unpaid coupons from the times they respectively fell due is in the

aggregate one hundred and sixty thousand one hundred and two dollars and eighty cents, (\$160,102.80), but that of said interest on unpaid coupons there has been heretofore paid to certain holders of certificates or scrip issued for said unpaid coupons, interest amounting to fifty four thousand two hundred and sixty five dollars and five cents (\$54,265.05) which has been deducted from the aggregate of interest on said unpaid coupons, thus leaving the whole amount of interest on said coupons remaining unpaid, one hundred and five thousand eight hundred and thirty seven dollars and seventy five cents (\$105,837.75) and that there is due in the aggregate of principal of said bonds, the coupons on said bonds, and of interest on the said coupons, unpaid on the first day of April, 1879, the sum of five millions four hundred and four thousand, eight hundred and twenty seven dollars and seventy five cents, (\$5,404,827.75) which interest on coupons, so as aforesaid heretofore paid is properly deductible by the said trustees from the amount of interest that would otherwise be due and payable to the parties, respectively, who received said interest on said coupons.

5. That said deed of trust, in the nature of a mortgage, mentioned and particularly described in the said Bill of Complaint, was duly executed by the said, the Houston and Great Northern Railroad Company to the said complainants, Moses Taylor and William E. Dodge, trustees, and duly proved, certified and recorded as in the said bill of complaint alleged and that the said Houston and Great Northern Railroad Company did thereby grant, bargain, sell, transfer, convey and confirm unto the said complainants, in trust as joint tenants and not as tenants in common, and to the survivor of them and to their successor or successors and to their assigns, all and singular the said last mentioned Company's railway, built and to be built, its main line, beginning at the Brazos River, passing through the city of Houston, connecting with the Memphis and El Paso Railroad near Clarksville, and passing as near the towns of Montgomery, Huntsville,

Crockett, Rusk and Tyler as was deemed expedient, to Red River, in the State of Texas a distance of about three hundred and fifty miles, its branches and extensions, together with all right of way, depot and shop grounds, tenements, hereditaments, franchises and rights, including and meaning to include all the property, real and personal, except the lands therein excepted, acquired and which might thereafter be acquired by the said company, in the State of Texas, all lands other than those necessary for right of way, depot and shop grounds, being not thereby conveyed nor intended so to be, which premises are now in the possession and use of and claimed by the said The International and Great Northern Railroad Company.

6. That by the terms of the said deed of trust, in the nature of a mortgage, and included therein and covered thereby, there were and are certain rolling stock and other personal property, more particularly described as follows: Listed.

7. That both the said the Houston and Great Northern Railroad Company and its successor and assigns, the said International and Great Northern Railroad Company and each of them have failed to pay the interest on said bonds and that default has continued more than ninety days after demand and that by such default the principal money mentioned in and secured by the said bonds, hath become, and is due and payable in United States gold coin.

8. That the defendants in this action, and each and every one of them, and all persons claiming or who may claim from or under them, or either of them subsequent to the filing of the bill of complaint herein by debt, judgment or decree or otherwise be and they hereby are forever barred and foreclosed of and from all equity of redemption, right, estate, demand, lien, title, interest and claim of, in and to the said mortgaged premises herein described and ordered to be sold, and every part and parcel thereof, except as herein stated, unless within twenty

days from the date of the entry of this decree, the defendant the International and Great Northern Railroad Company, or some one or more of the other defendants, shall, in redemption of such property, pay into this court the sum of five millions four hundred and four thousand eight hundred and twenty seven dollars and seventy five cents (\$5,404,827.75), in gold coin of the United States, with interest thereon from April 1, 1879, together with the amount of liabilities incurred by the Receiver heretofore appointed in this cause, in the management and protection of the property in his hands, as such receiver, and also all the costs, fees, allowances and compensation herein provided for, and costs and disbursements, incurred in and about the sale hereinafter directed, up to the time of such payment; But the party so redeeming shall be allowed for any sum or sums which may hereafter & before said redemption be paid on account of such principal or interest. That if no such payment be made all and singular, the said premises and property and all other property of the said Railroad Company, covered by and included in the said mortgage to the complainants, and not herein specially excepted, be sold for the purpose of satisfying or collecting the same sum, and as hereinafter directed, at public auction, at the court house of Travis County, in the City of Austin, in the State of Texas, and that a prior notice of at least sixty days be given of the time, place and terms of said sale, and of the specific property, (as nearly accurate as practicable) to be sold, and that such notice shall be published in two newspapers of good circulation in the said City of Austin and in one or more newspapers in the city of New York, and that said sale be made by Burr G. Duval, Esquire, who has heretofore been appointed master herein and who is hereby appointed and made a special master for the purpose of making such sale; and that all of said property be sold in one parcel and as one property at one and the same sale, (the same being, in the opinion of the court, incapable of being sold in separate parcels,



without material injury to the value thereof) to the highest bidder, to raise and satisfy the said principal of the said bonds and the interest so as aforesaid due thereon, and the interest hereafter to grow due thereon, together with the expenses and disbursements and the compensation of the said complainants, as trustees, as aforesaid, to be ascertained by the said master, hereby appointed for that purpose, together with the costs of complainants in this cause, to be taxed and the costs and expenses of making said sale. And as to the terms of said sale, it is hereby further ordered, adjudged and decreed, that the master, who shall make said sale, shall not at said sale, strike off or sell the said property until it shall produce at least the sum of five hundred thousand dollars in gold coin of the United States, and that if no bid of that amount be offered, the said master shall adjourn the sale from time to time until the further order of this Court, and that he require the payment on account of said sale at the time of striking off the same and before he shall accept the bid of the purchaser or purchasers thereat, the sum of at least twenty five thousand dollars in gold coin, to be accounted for by said master as part of the proceeds of the said sale, and on the delivery of the deed so much of the total purchase money shall be paid as shall be necessary to pay and discharge any obligations, liabilities or indebtedness of the said Receiver, and there shall also be paid so much of said purchase money as shall be necessary to pay and discharge all unpaid taxes upon the said mortgaged premises and all the costs, fees, allowances, compensation and commissions herein provided for, as well as all the expenses of said sale, and the said master shall cause a statement of the amount of money required for the said purpose, to be prepared as nearly accurate as practicable and shall have the total amount thereof announced at the said sale and submit such statement for inspection.

9. That for the remainder of the purchase money above the said sum of Twenty five thousand dollars, the

said master may receive, except as above stated, any of the past due coupons, and any of the bonds secured by the aforesaid mortgage, set forth in the Bill of Complaint, such coupons and bonds being received for such sum as the holders thereof would be entitled to receive under the distribution herein ordered and according to the priorities herein adjudged.

10. That the said master forthwith after such sale, make a report thereof to this court, and after the confirmation of said sale by the court, shall execute a deed to the purchaser or purchasers of the said mortgaged property, on their complying with the conditions on which said sale is made, and that sale be valid and effectual forever.

11. It is further ordered, adjudged and decreed that after confirmation of the sale, and delivery of the deed, the purchaser or purchasers of said property so to be sold be let into the possession, use and enjoyment thereof, and that any other parties to this action who may be in possession of the premises or property or any part thereof, and any person, who, since the commencement of this action, has come into the possession thereof or any part thereof, under the said defendants or either of them, and the receiver of this court who may be in possession or have control of the same or any part thereof under or by virtue of any order of this court, heretofore made or hereafter to be made in this action prior to the sale, shall, after the passing of his accounts, deliver and surrender possession to such purchaser or purchasers, on the production of the said master's deed or other proper evidence of sale and purchase of said franchises, premises and property.

12. And it is further ordered, adjudged and decreed that such purchaser or purchasers shall thereupon be fully vested with and shall have, hold, possess and enjoy said franchises, property and premises, so sold in pursuance of this decree, with all the rights and privileges pertaining thereto, as fully and completely as the said

defendants, the Houston and Great Northern Railroad Company was at the date of the said mortgage or the said defendant, the Houston and Great Northern Railroad Company or the International and Great Northern Railroad Company, its successor, has at any time since been invested with or has held, possessed or enjoyed.

13. And it is further ordered, adjudged and decreed that the said Master, after retaining from the proceeds of the sale hereby directed to be made, the amount of his own fees and expenses in executing this decree, shall pay out of the net proceeds of such sale as follows:

That is to say:

To the solicitors of the complainants in this cause their costs and disbursements to be taxed and such sums as shall be allowed in addition to costs, including therein such sum as shall be allowed to complainants herein for their commissions, compensations and services in and about their trust.

To the solicitors of the Complainants such counsel fees and expenses as the complainants or either of them may incur or become liable for in executing this decree and the said Master is hereby ordered to ascertain upon notice to and hearing of the respective parties and upon proof taken, and report, at least ten days before the sale of said property to this Court, what would be a reasonable allowance to the complainants for their services, expenses and outlay, including attorneys and counsel fees in regard to their trust, and also the proper compensation to the said Receiver and his solicitors, attorneys and counsel; and the complainants and the said receiver file a statement of the said claims with the said master within thirty days after the entry of this decree or be precluded from the benefit thereof, and that the amount specified in the master's report when confirmed by the court, be added to the amount with which the said Houston and Great Northern Railroad Company and the International and Great Northern Railroad Company and the said mortgage property are chargeable.

14. And it is further ordered, adjudged and decreed that the said master shall then pay and discharge all unpaid taxes upon the premises so sold which have accrued prior to the day of the said sale.

15. And it is further ordered, adjudged and decreed that the said master shall then next pay and discharge all obligations, which may have been incurred by the said receiver under the order of the court herein, with the accrued interest thereon, and with the remaining amount, if any, of the proceeds of said sale, the master shall then for the further satisfaction of the bonds and coupons secured by the complainants deed of trust in the nature of a mortgage, pay in gold coin of the United States or its equivalent, to the several and respective holders of the bonds issued under the said first mortgage and outstanding and unpaid and to the holders of the remaining unpaid coupons, the principal amount of said bonds and coupons together with interest due on said coupons from the time they respectively became due and payable until payment in full, if the said balance shall be sufficient therefor, and if not then such payments shall be made ratably in proportion to the amount of the said bonds, coupons and balance of interest, provided that such holders shall surrender to the said master such bonds and coupons if paid in full to be cancelled, and if not paid in full the said master shall endorse on said bonds and coupons a suitable receipt for the amount in fact paid. If there shall be any surplus money remaining of the aforesaid proceeds of the sale, after the payment in full of the several amounts hereinbefore directed and allowed to be paid, then the said master shall bring the same into court with his report of the sale to abide the further order of this court touching the same, and the said master shall take and bring into court with his report proper receipts and vouchers for all payments and expenses.

16. And it is further ordered, adjudged and decreed that if there shall be any deficiency in the amount required to be paid in full of the amounts hereinbefore recited and

allowed to be paid, then the said master shall specify the aggregate amount of such deficiency in his report of sale.

17. It is further ordered, adjudged and decreed that the said master shall keep all monies and securities received for the said property, including the bonds and coupons aforesaid, on deposit in the City Bank of Houston subject to his own order as such master in this cause, such monies, however, to be drawn by him only for the purpose of this decree and by checks countersigned by the Judge of the United States District Court for the Western District of Texas; that no payment be made out of the surplus income of said road or the proceeds of the sale except upon and pursuant to such order as this court may hereafter make for that purpose, and that the said master shall make report to this Court of all he shall do under and by virtue of this decree and which he is not hereinbefore required to report specially with all convenient speed and as to such bonds or coupons as he shall receive on account of the amount paid on said sale, if the same be not paid in full he is to endorse upon the same the amount at which they are received by him.

18. It is also hereby referred to the said master to pass the accounts of the receiver hereinbefore appointed in this cause up to the day of sale.

19. And it is further ordered, adjudged and decreed that it be and it is hereby referred to the said B. G. Duval, Esquire, as special master appointed by this court for that purpose, to ascertain and report to this court with all convenient speed, who are the lawful holders and owners of said bonds and coupons and the amount due each holder thereof respectively; to state and report an account for the income of the said mortgaged premises since the first day of April One thousand eight hundred and seventy eight; and the expenses and cost of operating the said mortgaged premises, during the same time and what amount of said income, if any, is applicable to the payment of the aforesaid interest coupons and bonds due and the interest to grow due upon the bonds so as

aforesaid secured by the said deed of trust in the nature of a mortgage.

20. And it is further ordered, adjudged and decreed that within fifteen days after the making of such sale the said receiver file his account with the said master and give notice of the filing to the solicitors for the parties who have appeared in this cause, and thereupon, upon any party filing objection to such account, the said master to proceed to audit and adjust said account and the objections thereto and to report his audit and the accounts as adjusted by him to this Court; that on obtaining a confirmation of said report, if it appear by the same as confirmed, that any balance of money in the hands of the receiver, or that he is chargeable in favor of the complainants or others, entitled to any money under this decree, with any balance of money, then he shall forthwith, upon confirmation of such report pay such balance into said City Bank of Houston, subject to the order of said master to be by him drawn in the same manner as hereinbefore provided as the proceeds of said sale and to be by said master appropriated and distributed in the same manner and for the same purposes as the cash proceeds of such sale.

21. And it is further ordered, adjudged and decreed that any of the parties to this action may become the purchaser of said mortgaged premises at the said sale.

22. And it is further ordered, adjudged and decreed that any party to this action may apply to this court for such other or further direction as may be necessary to carry this decree into effect and it is hereby referred to the said master to pass the said accounts of the said receiver and to report thereon and for that purpose the said receiver is directed to attend before him at such time and place as may be designated by said master by his order or summons for that purpose, to file his account under oath and produce his books, papers, vouchers and either party may except to the master's report upon the matters hereby referred to him and may bring such ex-

ceptions to hearing upon due notice and so far as the computation, audits and allowances made by the Master shall be passed upon by the Court the same shall take effect as if now incorporated in and passed upon by this court, except that for the purpose of appeal growing out of matters so reserved, the time of appeal shall run from the date of the confirmation of the report, and all further directions and equities are reserved.

(Sgnd) W. B. Wood,  
*U. S. Circuit Judge.*  
 T. H. DUVAL,  
*U. S. Dist. Judge.*

April 15, 1879.

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**EXHIBIT "X."**

**IN THE CIRCUIT COURT OF THE UNITED  
 STATES FOR THE WESTERN DISTRICT  
 OF TEXAS AT AUSTIN:**

MOSES TAYLOR AND  
 WM. E. DODGE, TRUSTEES,

*Complainants,*

vs.

No. 137.

IN EQUITY.

THE HOUSTON & GREAT NORTHERN RAILROAD  
 COMPANY AND OTHERS,

*Defendants.*

**DECREE CONFIRMING MASTER'S REPORT OF SALE.**

And now on this day, to-wit, the Fourth, it being the first Monday in August, A. D. One Thousand Eight Hundred and Seventy nine, all the parties to this suit coming into Court by their solicitors and consenting in open Court that the Report of the Special Master, Burr G. Duval, Esqr., heretofore appointed herein, filed in this Court on the 1st day of August, 1879, be confirmed, with-



out further delay, being a report by the said Special Master of the sale made by him of the Houston and Great Northern Railroad and its franchises, road, lands, rolling stock, equipment and other property belonging to the Houston and Great Northern Railroad Company on the 31st day of July, A. D. 1879, in pursuance of the directions contained, together with other matters in the final decree heretofore rendered in the cause on the 1<sup>th</sup> day of April, A. D. 1879, and the reports of the said Master being duly inspected and examined by the Court and the manner in which the sale was conducted by him having been enquired into by the Court;

And it appearing to the Court that the publication of the notices for said sale was made in accordance with the terms of the deed of trust, on which said final decree was based, and in accordance with the directions contained in the said decree and that said sale was had at the time and place designated in said decree and was, in all respects, conducted fairly and in accordance with the directions of the said final decree, and with the laws of the State of Texas, applicable to the same, and that said property was, after being duly cried, struck off to John S. Kennedy and Samuel Sloan, Trustees, who were the highest and best bidders for the same, for the following sum of money, to-wit: Five Hundred Thousand Dollars in gold coin of the United States and upon the following terms and conditions, to-wit, Twenty five Thousand dollars in gold coin of the United States, then and there payable in cash, the remaining sum of Four Hundred and Seventy five Thousand dollars in gold coin of the United States to be paid on the delivery of the Special Master's deed, at the option of said John S. Kennedy and Samuel Sloan, Trustees, the purchasers aforesaid, either in like gold coin or in the bonds and past due coupons, secured by the mortgage on which said final decree was based, to be received for such sums as the holders thereof are entitled to receive under said final decree.

And it appearing to the Court that said sum of Twenty-

five Thousand Dollars in gold coin of the United States was paid to said Master by said John S. Kennedy and Samuel Sloan, Trustees, at the time and place of said sale, and is now in the hands of said Master;

And it further appearing to the Court that the Receiver of said property was, at the time of said sale, and still is, in possession of funds sufficient to pay all his obligations, liabilities and indebtedness, and all the said Taxes, costs, fees, allowances compensations, commissions and expenses, and that said funds are properly applicable thereto;

It is, therefore

**ORDERED, ADJUDGED and DECREED**

I. That the sale so made be and the same is hereby confirmed.

II. That R. Somers Hayes, Esqr., the Receiver appointed in this cause, do pay, out of the funds in his hands, to the said Special Master a sum of Twelve hundred dollars (\$1200.00) in full for his fees, as agreed upon by the parties hereto, and a further sum—hereafter to be ascertained and passed upon by this Court, for the expenses of said Master in carrying out the directions contained in the final decree in this cause, entered on the 15th day of April, 1879.

And the said Receiver is further directed to pay out of the funds in his hands any other expenses connected with this cause, not heretofore provided for, after the same shall have been passed upon and approved by the Master.

III. That the said Master shall, upon the payment to him by the said bidders, of the said remaining sum of Four Hundred and Seventy-five Thousand dollars, in gold coin of the United States, or in bonds and past due coupons in due proportion, as aforesaid, to the sums which the holders thereof are entitled to receive under said final decree, execute a conveyance, under seal in his name, as Special Master, to said John S. Kennedy and Samuel Sloan, Trustees, and such persons as may be associated with them, if any, their heirs and assigns, reciting in the same the final decree under which said sale was

made, and also reciting therein this decree, confirming said sale, and granting to and vesting in them, by the said conveyance, all property so purchased, and also vesting in them, their heirs and assigns, the road-bed, tracks, franchises and chartered powers and privileges of the said Houston and Great Northern Railroad Company and of the International and Great Northern Railroad Company, so far as the latter succeeded to the title of said Houston and Great Northern Railroad Company granted to them by virtue of their charter, or by any other laws of the State of Texas or of the United States and also vesting in them, their heirs and assigns, the true ownership of said Road, with all the powers, rights, franchises, privileges and benefits of said Houston and Great Northern Railroad Company and International and Great Northern Railroad Company therein, in the same manner and to the same extent as if the purchasers, above named, and their associates had been the original corporators of the said Company and vesting them with the power to operate, construct, complete, repair and work the said Railroad upon the same terms and under the same conditions and restrictions as are imposed by charters of the said Railroad Companies and by the General Laws of the State of Texas, affecting the same.

IV. That the said conveyance of the said Master shall contain, in accordance with the laws of the State of Texas, a provision to the effect that the sale of said Road-bed, tracks, franchises and chartered rights, above set forth, shall not pass or convey to the purchasers above named any right or claim to recover from the former stockholders of the said companies any sums which may remain due upon their subscriptions of stock, but that the said stock holders shall continue liable to pay the same in discharge and liquidation of the debts due by the said companies.

V. That the conveyance of the said Master, so executed by him, in accordance with this decree, shall be witnessed by two competent subscribing witnesses, in the manner required by the laws of the State of Texas, and

that, after being so witnessed, the same shall be duly acknowledged for record by the said Master in accordance with the laws of the State of Texas and thereupon delivered by him, the said Master, to the said purchasers above named, to serve them as the evidence of their title to the said property, so conveyed to them.

VI. It is further ordered that, after the said Master shall have executed and delivered to the said purchasers, John S. Kennedy and Samuel Sloan, Trustees, the said deed of conveyance provided herein, and when the said purchasers above named, shall be let into the possession and enjoyment of said property, so conveyed, the said Receiver, after the approval, by the said Master of his accounts, shall pay over and account to the said purchasers, for so much of the net earnings of said road as may remain in his hands after paying and discharging all the costs and charges of every kind against said property, which are justly, under the final decree, and other orders of this Court, chargeable against said property in the hands of the Receiver.

(Signed) T. H. DUVAL,

*U. S. District Judge, and act'g Circuit Judge.*

August 4th, 1879.

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### EXHIBIT "Y."

#### DEED

of

BURR G. DUVAL, SPECIAL MASTER, TO JOHN S. KENNEDY AND SAMUEL SLOAN, TRUSTEES,  
Conveying the Houston and Great Northern Railroad.

Dated October 14th, 1879.

IN THE CIRCUIT COURT OF THE UNITED  
STATES FOR THE WESTERN DISTRICT  
OF TEXAS, AT AUSTIN.

IN CHANCERY.

KNOW ALL MEN BY THESE PRESENTS, That,  
WHEREAS, In a certain foreclosure suit between

Moses Taylor and William E. Dodge, Trustees, complainants, and the Houston and Great Northern Railroad Company, the International and Great Northern Railroad Company, John A. Stewart and William H. Osborn, trustees, R. Somers Hayes, receiver, and John S. Barnes and Thomas W. Pearsall, trustees, defendants, the said complainants lately in a Circuit Court of the United States in and for the Fifth Circuit and Western District of Texas, in equity, obtained a decree in their favor on the fifteenth day of April, in the year one thousand eight hundred and seventy-nine, whereby Burr G. Duval, a special master of said Court, was directed, as such special master, to sell all the property hereinafter mentioned at public auction, at the court-house of Travis County, in the city of Austin and State of Texas, to the highest bidder, for the purpose of satisfying certain claims set forth in said decree, together with certain costs and expenses therein mentioned.

AND WHEREAS, The said Burr G. Duval, as special master aforesaid, in obedience to the said decree, did, on the 31st day of July, in the year aforesaid, sell the property hereinafter described, being the same property hereinbefore mentioned, at public auction at the said court house of Travis County, in the city of Austin and State of Texas, having first given notice of the time, place and terms of said sale, and of the specific property (as nearly accurate as possible), to be sold, by publishing such notice for the time required by the said decree, in two newspapers of good circulation, in the city of Austin, to-wit, the "Sunday Leader" and the "Democrat Statesman"; and in one paper in the city of New York, also of good circulation, to-wit: "The New York Commercial Advertiser," at which sale the said property was struck off and sold to John S. Kennedy and Samuel Sloan, trustees, for the sum of five hundred thousand dollars; they, the said John S. Kennedy and Samuel Sloan, trustees, being the highest bidders, and that sum being the highest sum bidden for the same, and the said John S. Kennedy and Samuel Sloan, trustees, having paid to the said Burr G. Duval,

special master, at the time of striking off the sale, and before he accepted their bid, the sum of \$25,000 in gold coin.

AND WHEREAS, The said Burr G. Duval, as such master aforesaid, did, forthwith after such sale, make a report thereof to the said Circuit Court on the first day of August, in the year aforesaid, and an order was duly made by and entered in the said Court on the fourth day of August aforesaid, confirming the said sale.

NOW, THEREFORE, The said Burr G. Duval, as special master aforesaid, for and in consideration of the sum of five hundred thousand dollars to him paid, the receipt whereof is hereby acknowledged, hath granted, bargained, sold and conveyed, and by these presents doth grant, bargain, sell and convey unto the said John S. Kennedy and Samuel Sloan, as trustees, and to the survivor of them, in fee simple absolute, all and singular the railway of the Houston and Great Northern Railroad Company, built and to be built, its main line, beginning at the Brazos River, passing through the city of Houston, connecting with the Memphis and El Paso Railroad near Clarksville, and passing as near the towns of Montgomery, Huntsville, Crockett, Rusk and Tyler as was deemed expedient, to the Red River in the State of Texas, a distance of about three hundred and fifty miles, its branches and extensions, together with all right of way, depot and shop grounds, tenements, hereditaments, franchises and rights, including and meaning to include all the property real and personal, at any time acquired by the said Company in the State of Texas (except lands other than those necessary for right of way, depot and shop grounds, the same being not hereby conveyed nor intended to be), which premises are now in the possession and use of and claimed by the said The International and Great Northern Railroad Company, and also certain rolling stock and other personal property, more particularly described as follows:

(NOTE: Contained in the deed is a description of rolling stock by numbers, which is omitted from this copy.)

And also all the road-bed, tracks, franchises and chartered powers and privileges of the said Houston and Great Northern Railroad Company and of the International and Great Northern Railroad Company, so far as the latter succeeds to the title of said Houston and Great Northern Railroad Company, granted to them by virtue of their charters, or by any other laws of the State of Texas or of the United States.

And also all other property of the said railroad companies, if any, covered by and included in the mortgage mentioned in the said decree, and all the estate, powers, right, title, interest, franchises, privileges, benefits, property, possession, claim and demand whatsoever, as well in law as in equity, of the said Houston and Great Northern Railroad Company and the International and Great Northern Railroad Company of, in and to the premises aforesaid and each and every part thereof, with the appurtenances.

TO HAVE AND TO HOLD unto the said John S. Kennedy and Samuel Sloan, as trustees, and to the survivor of them, in fee simple absolute forever, as fully as the said Houston and Great Northern Railroad Company and the International and Great Northern Railroad Company, both or either of them, were seized of or entitled to at or before the entry of the decree aforesaid, and in the same manner and to the same extent as if the said John S. Kennedy and Samuel Sloan, trustees, had been the original corporators of the said Houston and Great Northern Railroad Company, with full power to operate, construct, complete, repair and work said railroad upon the same terms and under the same conditions and restrictions as are imposed by the charters of the said railroad companies, and by the general laws of the State of Texas affecting the same, and as fully and absolutely as the said Burr G. Duval, master, can, may or ought to, by virtue of the said decree, grant, bargain, sell, release, assign, convey and confirm the same.

But this instrument shall not pass or convey to the said



John S. Kennedy and Samuel Sloan, trustees, any right or claim to recover from the former stockholders of the said companies any sums which may remain due upon their subscriptions of stock, but the said stockholders shall continue liable to pay the same in discharge and liquidation of the debts due by the said companies, and no covenant is to be implied from this deed, except that the said Burr G. Duval, as special master aforesaid, has not made any prior conveyance of the property herein mentioned or any part thereof.

In witness whereof the said Burr G. Duval, special master in the Circuit Court as aforesaid, hath hereunto set his hand and seal this fourteenth day of October, one thousand eight hundred and seventy-nine.

BURR G. DUVAL,  
*Special Master, &c.*

Deed signed in presence of  
GEO. SEALY,  
JOHN B. ACOSTA.

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**EXHIBIT "Z."**

MAP.

UNITED STATES CIRCUIT COURT, NORTHERN  
DISTRICT OF TEXAS.

THE MERCANTILE TRUST COMPANY, TRUSTEE,  
THE FARMERS' LOAN AND TRUST COM-  
PANY, TRUSTEE, GEORGE J. GOULD, ET  
ALS., MARSHALL CAR WHEEL & FOUNDRY  
CO. ET AL.,

*Complainants,*

—VERSUS—

CONSOLIDATED CAUSE  
No. 2501.

INTERNATIONAL AND GREAT NORTHERN RAILROAD  
COMPANY,

*Defendant.*

THE FARMERS' LOAN AND TRUST COMPANY, TRUSTEE,  
*Complainant,*

—VERSUS—

EQUITY CAUSE  
No. 2514.

INTERNATIONAL AND GREAT NORTHERN RAILROAD  
COMPANY, THE MERCANTILE TRUST COM-  
PANY AND THOMAS J. FREEMAN, AS RE-  
CEIVER OF THE INTERNATIONAL AND  
GREAT NORTHERN RAILROAD COMPANY,

*Defendants.*

Decree confirming final report of William H. Flippen,  
Master Commissioner, and account and report of Thom-  
as J. Freeman, Receiver.

(This exhibit is the same as Exhibit J-1, heretofore  
printed, which see.)

**PLAINTIFFS' FIRST SUPPLEMENTAL PETITION.**  
**IN THE DISTRICT COURT OF CHEROKEE**  
**COUNTY, TEXAS.**

ANDERSON COUNTY ET AL

vs.

No. —

INTERNATIONAL & GREAT NORTHERN  
 RAILWAY COMPANY.

*To the Honorable Judge of the District Court of Cherokee County, Texas:*

Now come the plaintiffs, and, by leave of the court, file this their first supplemental petition herein, viz:

1.

For replication to the plea to the jurisdiction and to the plea in abatement contained in defendant's First Amended Original Answer, plaintiffs say:

(1). The plaintiffs deny all the allegations in Section 1 contained, save that the Mercantile Trust Company filed, on Feb. 25, 1908, in the Circuit Court of the United States for the Northern District of Texas, the Bill of Complaint, as shown by the copy attached to defendant's First Amended Original Answer and marked Exhibit "A."

(2). The plaintiffs admit that the suit mentioned in section 1 was docketed and transferred as alleged in Section 2 of said plea to the jurisdiction and plea in abatement, and admit that Exhibit "B" is a true copy of the order of appointment of the Receiver, but deny that said suit is still pending.

(3). The plaintiffs admit the allegations contained in Section 3 of said plea to the jurisdiction and plea in abatement, save that plaintiffs have no knowledge or information of the truth of the matters alleged in the Bill set out in Exhibit "C" sufficient to form a belief as to their truth.

(4). The plaintiffs admit the allegations contained in

Section 4 of said plea to the jurisdiction and plea in abatement.

(5). The plaintiffs admit the allegations contained in Section 5 of said plea.

(6). The plaintiffs admit the allegations contained in Section 6 of said plea.

(7). The plaintiffs admit the allegations contained in Section 7 of said plea.

(8). The plaintiffs admit the allegations contained in Section 8 of said plea.

(9). The plaintiffs admit the allegations contained in Section 9 of said plea, save that plaintiffs have no knowledge or information of the truth of the matters alleged in the Supplemental Bill or as to any authorization of the mortgages therein mentioned, sufficient to form a belief as to their truth.

(10). The plaintiffs deny all the allegations contained in Section 10 of said plea save and except that the Circuit Court therein mentioned duly rendered and entered the decree of foreclosure of which a copy is attached to defendant's first amended original answer and is marked Exhibit "H".

(11). The plaintiffs admit the allegations contained in Section 11 of said plea to the jurisdiction and plea in abatement.

(12). The plaintiffs admit the allegations contained in Section 12 of said plea.

(13). The plaintiffs admit the allegations contained in Section 13 of said plea.

(14). The plaintiffs admit the allegations contained in Section 14 of said plea.

(15). The plaintiffs deny the allegations contained in Section 15 of said plea, save they admit the incorporation of defendant under the Charter of which a copy is attached to defendant's first amended original answer and marked Exhibit "K".

(16). The plaintiffs admit the allegations contained in Section 16 of said plea, save and except the allegation

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that defendant has operated its properties in accordance with the laws of Texas, which latter allegation is expressly denied.

(17). The plaintiffs believe the allegations of Section 17 of said plea to be true and hence admit same.

(18). The plaintiffs deny the allegations contained in Section 18 of said plea.

(19). The plaintiffs deny the allegations contained in Section 19 of said plea.

(19). The plaintiffs deny the allegations contained in Section 19 of said plea.

(20). The plaintiffs deny the allegations contained in Section 20 of said plea.

(21). The plaintiffs deny the allegations contained in Section 21 of said plea, with the following exceptions:

a. The plaintiffs admit that defendant's board of directors adopted the resolution of which a copy is attached as Exhibit "M" to defendant's first amended original answer.

b. The plaintiffs admit the service on the Commissioners Court of Anderson County and on the City Council of the City of Palestine of the notices of which copies are attached as Exhibits "O" and "P" to said answer.

(22). The plaintiffs expressly deny each and every allegation contained in Section 22 and subdivisions (a) to (e) thereunder of said plea to the jurisdiction and plea in abatement.

(23). For further replication to said plea to the jurisdiction and plea in abatement these plaintiffs say and charge that they were and are strangers to all the judicial proceedings set out by defendant in its first amended original answer, and that the Circuit Court of the United States for the Northern District of Texas has never attempted or undertaken to acquire or exercise or reserve, and has never acquired, exercised, or reserved jurisdiction of the causes of action asserted in plaintiffs' first amended original petition, and this plaintiffs are ready to verify.

(24). For further replication to said plea to the jurisdiction and plea in abatement plaintiffs aver that if the Circuit Court of the United States for the Northern District of Texas had ever obtained or reserved jurisdiction over the causes of action alleged by plaintiffs, which is not admitted but is expressly denied, that heretofore, to-wit: on the 25th day of September, 1911, said Circuit Court made and entered a final judgment and decree in Consolidated Cause No. 2501 in said Court, styled The Mercantile Trust Company, Trustee, The Farmers' Loan and Trust Company, Trustee, George J. Gould et als, Marshall Car Wheel & Foundry Co. et al, Complainants, versus International and Great Northern Railroad Company, defendant, and in Equity Cause No. 2514, in said Court, styled The Farmers' Loan and Trust Company, Complainant, versus International & Great Northern Railroad Company, The Mercantile Trust Company, and Thomas J. Freeman as Receiver of the International and Great Northern Railroad Company, defendants, and being the same Causes referred to in defendant's first amended original answer, whereby the final report of William H. Flippen, Master Commissioner, and of Thomas J. Freeman, Receiver, were in all respects approved and confirmed, and whereby it was expressly ordered and adjudged by said Circuit Court that the International & Great Northern Railway Company should take and hold the railroads, properties and franchises of the International and Great Northern Railroad Company released and discharged from the possession and custody of said Receiver and of said Court from and after the 16th day of September 1911, and whereby it was further expressly adjudged, ordered and decreed by said Circuit Court that the said Thomas J. Freeman as Receiver of the railroads, properties and franchises of the International & Great Northern Railroad Company was discharged as such Receiver, and whereby it was further expressly adjudged, ordered and decreed by said Circuit Court that all of the railroads, properties and franchises of the International

& Great Northern Railroad Company or said Receiver formerly in the possession, custody, or control of said Receiver be and the same were forever and finally discharged from the possession, custody, and control of said Receiver and of said Circuit Court of the United States for the Northern District of Texas, and a true and certified copy of said final judgment and decree is hereto attached, marked Exhibit "A", and made a part hereof.

Wherefore, plaintiffs say that the jurisdiction of this Court, which was invoked by defendant on its motion for change of venue from the District Court of Anderson County, Texas, is complete and ample for the adjudication of all controverted issues herein and its exercise involves no collision or conflict with any other Court, State or Federal, and hence plaintiffs pray that defendant's plea to the jurisdiction and plea in abatement be overruled.

THE STATE OF TEXAS,  
COUNTY OF ANDERSON.

I, Thos. B. Greenwood, do on my oath say that I am an attorney for plaintiffs in the above entitled cause and that the statements of fact contained in the above Supplemental Petition are believed by me to be true.

THOS. B. GREENWOOD.

Subscribed and sworn to before me this the 3d day of January, 1914.

(SEAL)

M. J. JACKSON,

Notary Public for Anderson County, Texas.

2.

Plaintiffs specially except to the allegations contained paragraphs 33-a to 33-o, both numbers included, of defendant's first amended original answer upon the following grounds: (1) Because the facts alleged in said paragraphs are wholly insufficient to constitute any defense to any cause of action alleged by plaintiffs; (2) Because, as held by the Supreme Court of Texas, this suit is to enforce a general law of the State of Texas, enacted in



1889, and requiring for its application no other facts than that a railroad company previously owning the franchise to operate the railroad had, at a time prior to the enactment of the Statute, contracted or agreed, for a valuable consideration, to locate and keep the general offices, machine shops and round houses of such railroad at a particular place, it appearing from the facts alleged by both plaintiffs and defendant that no certain place was named in the charter of the International and Great Northern Railroad Company for the location of its general offices, and hence no matters set out in paragraphs 33-a to 33-o could affect or defeat the general law of the State.

And of these special exceptions, plaintiffs pray the judgment of the court.

3.

The plaintiffs deny the allegations contained in each of the following paragraphs of defendant's first amended original answer, to-wit: paragraphs IV, IV-a, V, VI, and VII.

4.

For replication to the facts averred in paragraph VIII of defendant's first amended original answer, plaintiffs say:

(1). The plaintiffs deny all the allegations in Section 1 contained, save that the Mercantile Trust Company filed, on Feb. 25, 1908, in the Circuit Court of the United States for the Northern District of Texas, the Bill of Complaint, as shown by the copy attached to defendant's first amended original answer and marked Exhibit "A".

(2). The plaintiffs admit that the suit mentioned in section 1 was docketed and transferred as alleged in Section 2 of said paragraph VIII, and admit that Exhibit "B" is a true copy of the order of appointment of the Receiver, but deny that said suit is still pending.

(3). The plaintiffs admit the allegations contained in Section 3 of said paragraph VIII, save that plaintiffs have no knowledge or information of the truth of the

matters alleged in the Bill set out in Exhibit "C", sufficient to form a belief as to their truth.

(4). The plaintiffs admit the allegations contained in Section 4 of said paragraph VIII.

(5). The plaintiffs admit the allegations contained in Section 5 of said paragraph VIII.

(6). The plaintiffs admit the allegations contained in Section 6 of said paragraph VIII.

(7). The plaintiffs admit the allegations contained in Section 7 of said paragraph VIII.

(8). The plaintiffs admit the allegations contained in Section 8 of said paragraph VIII.

(9). The plaintiffs admit the allegations contained in Section 9 of said paragraph VIII, save that plaintiffs have no knowledge or information of the truth of the matters alleged in the Supplemental Bill or as to any authorization of the mortgages therein mentioned, sufficient to form a belief as to their truth.

(10). The plaintiffs deny all the allegations contained in Section 10 of said paragraph VIII, save and except that the Circuit Court therein mentioned duly rendered and entered the decree of foreclosure, of which a copy is attached to defendant's first amended original answer, and is marked Exhibit "H".

(11). The plaintiffs admit the allegations contained in Section 11 of said paragraph VIII.

(12). The plaintiffs admit the allegations contained in Section 12 of said paragraph VIII.

(13). The plaintiffs admit the allegations contained in Section 13 of said paragraph VIII.

(14). The plaintiffs admit the allegations contained in Section 14 of said paragraph VIII.

(15). The plaintiffs deny the allegations contained in Section 15 of said paragraph VIII save they admit the incorporation of defendant under the Charter, of which a copy is attached to defendant's first amended original answer and marked Exhibit "K".

(16). The plaintiffs admit the allegations contained in

Section 16 of said paragraph VIII, save and except the allegation that defendant has operated its properties in accordance with the law of Texas, which latter allegation is expressly denied.

(17). The plaintiffs believe the allegations of Section 17 in said paragraph VIII to be true and hence admit same.

(18). The plaintiffs deny the allegations contained in Section 18 of said paragraph VIII.

(19) and (20). The plaintiffs deny the allegations contained in Sections 19 and 20 of said paragraph VIII.

(21). The plaintiffs deny the allegations contained in Section 21 of paragraph VIII, with the following exceptions:

a. The plaintiffs admit that defendant's board of directors adopted the resolution of which a copy of attached as Exhibit "M" to defendant's first amended original answer.

b. The plaintiffs admit the service on the Commissioners' Court of Anderson County and on the City Council of the City of Palestine of the notices of which copies are attached as Exhibits "O" and "P" to said answer.

(22). The plaintiffs expressly deny the allegations contained in Section 22 of paragraph VIII.

(23). The plaintiffs expressly deny each and every allegation contained in Section 23 of said paragraph VIII, and subdivisions (a) to (d) thereunder.

(24). For further special replication to said paragraph VIII of defendant's first amended original answer the plaintiffs repeat and re-aver all of the allegations contained in sections 23 and 24 of paragraph 1 of this supplemental petition, and hence pray judgment as in their first amended original petition.

##### 5.

For replication to the facts averred in paragraph IX of defendant's first amended original answer, plaintiffs say:

(1). The plaintiffs repeat their replication above made to Section VIII and sub-sections 1 to 21.

(2). The plaintiffs admit the allegations contained in each of the following sections of paragraph IX, to-wit: sections 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 33-n, and 33-o.

(3). The plaintiffs deny the allegations contained in each of the following named sections of paragraph IX, to-wit: sections 12, 29, 30, and 31, save and except plaintiffs admit:

(a). That the principal office of the Houston and Great Northern Railroad Company was originally established at Houston.

(b). That the general offices of the International Railroad Company and of the Houston and Great Northern Railroad Company were consolidated at Houston, after the International moved its general offices from Hearne until the International and Great Northern Railroad Company, in 1875, established its general offices at Palestine, in compliance with the contracts plead by plaintiffs.

(4). The plaintiffs expressly deny the allegations contained in each of the following sections of said paragraph IX, to-wit: sections 13, 32, and 33.

(5). The plaintiffs have no knowledge or information of the truth of the allegations contained in each of the following named sections of said paragraph IX, to-wit: 33-a, 33-b, 33-c, 33-d, 33-e, 33-f, 33-g, 33-h, 33-i, 33-j, 33-k, 33-l & 33-m, and hence deny same.

(6). For replication to paragraphs 33-a to 33-o, of defendant's first amended original answer, plaintiffs say that if John S. Kennedy and Samuel Sloan, as trustees, ever became the purchasers of the railroads, properties and franchises of the International Railroad Company, of the Houston and Great Northern Railroad Company, and of the International and Great Northern Railroad Company, which is not admitted, that they became such purchasers as trustees for the stockholders of the International and Great Northern Railroad Company, as the same existed at the dates of the sales and conveyances of said railroads, properties and franchises, and as trustees

for the holders of the outstanding bonds of said companies, which were sought to be foreclosed by the decrees under which such railroads, properties and franchises were sold, and as trustees of the owners and holders of the decrees of foreclosure, in order to consummate an agreement of all parties at interest that the rights of said stockholders should not be extinguished or affected by said sale, but should be continued and preserved just as the same existed prior to the rendition of the decrees of foreclosure or any sale thereunder. That it was agreed between the International and Great Northern Railroad Company and its stockholders and the said Trustees and the said bondholders and the said owners of the decrees under which said railroads, properties and franchises were sold, prior to and at the date of such sale, that the said John S. Kennedy and Samuel Sloan should re-convey said railroads, properties and franchises to said International and Great Northern Railroad Company, as composed of the same stockholders as those who prior to said sale owned the outstanding stock of said International and Great Northern Railroad Company and that such Company, as composed of said former and old stockholders should then issue new bonds, secured by new mortgages on said railroads, properties and franchises, to secure the same indebtedness previously held by said bondholders, owning said decrees of foreclosure, and in consummation of said agreement and in order to prevent any real change in the ownership of said railroads, properties and franchises, the said trustees, Jno. S. Kennedy and Samuel Sloan, on or about the 1st day of November, 1879, reconveyed to the International and Great Northern Railroad Company, as owned by the stockholders thereof before said sale, the aforesaid railroads, properties and franchises, and on the same day said International and Great Northern Railroad Company, as owned and controlled by said former stockholders, executed and delivered its mortgages and bonds in renewal and extension of the indebtedness previously evidenced by said

foreclosed bonds. That said sale was made and consummated under the express agreement of all parties that same should not affect the stock ownership in said International and Great Northern Railroad Company, and such stock ownership was never changed, for if it was in the names of John S. Kennedy and Samuel Sloan as trustees, they were acting as nominal trustees for said Railroad Company and its former stockholders, and this plaintiffs are ready to verify.

(6). The plaintiffs expressly deny each and every allegation of section 34, of said paragraph IX, and of subsections (a) to (g) thereunder.

(7). The plaintiffs expressly deny each and every allegation of section 35 of said paragraph IX, and of subsections (a) to (g) thereunder.

(8). The plaintiffs expressly deny each and every allegation of section 36 of said paragraph IX and subsections (a) to (e) thereunder.

(9). The plaintiffs in replication of section 37 of paragraph IX of defendant's first amended original answer repeat all replications elsewhere made to the matters therein plead and repeated.

(10). The plaintiffs for replication to section 38, of said paragraph IX deny each and every allegation therein contained, save and except in so far as defendant re-alleges matters already plead, and as to such re-alleged matters the plaintiffs repeat their replications as elsewhere made.

(11). The plaintiffs expressly deny the allegations of Section 39 of said paragraph IX, and expressly deny that the charter of the Houston & Great Northern Railroad Company contained any provision forbidding a change of its principal office, by contract, as alleged, in 1872 or in 1875, and expressly deny that the charter of the International and Great Northern Railroad Company ever fixed the domicile or general offices of the consolidated railroad at Houston, Texas.

## 6.

For replication to the allegations contained in paragraph X of defendant's first amended original answer, plaintiffs say:

(1). Plaintiffs repeat and re-aver their replications elsewhere made to all allegations repeated and re-averred in section 1 of said paragraph X.

(2). Plaintiffs admit that the Act of 1889 has been construed by the Supreme Court of Texas, but deny that it has ever been construed in accordance with the defendant's contentions, all such contentions having always been rejected by said court, since its organization. All other allegations of section 2 of paragraph 10 save that the Supreme Court had construed said Act and that defendant had attempted in its charter to name Houston as the place for the establishment and maintenance of its general offices, are denied.

(3). Plaintiffs admit the allegations contained in sections 3, 4, 5, 7, & 9, of said paragraph X.

(4). The plaintiffs deny the allegations contained in sections 6, 8, 10, and 11, with its subsections (a) to (d), save such matters as have been hereinbefore expressly admitted.

## 7.

The plaintiffs admit the allegations contained in sections 2 and 5, of paragraph XI of defendant's first amended original answer, save plaintiffs deny that the enforcement of their claims will hamper defendant.

(2). The plaintiffs deny the allegations contained in sections 1, 3, 4, 6, and 7 with its subsections (a) to (c), under said paragraph XI, save as hereinbefore expressly admitted, save that the comparative sizes of Palestine and Houston are stated with substantial accuracy.

## 7-a.

For replication to the allegations contained in Section 11-a plaintiffs say (1st): Plaintiffs re-aver and re-adopt all of the allegations contained elsewhere in this 1st sup-



plemental petition by way of replication to Sections VII and IX of defendant's first amended original answer; (2nd) The plaintiffs admit that the legal proceedings were had in the District of Anderson County, Texas, which appear from the copies attached as Exhibits to defendant's first original answer, and which are referred to in said Section 11-a; (3rd) The Plaintiffs deny each and every allegation contained in Section 11-a, save as herein expressly admitted, and they expressly deny that the causes of action asserted herein by them were ever involved in or determined or adjudicated by the judgments of the District Court of Anderson County and of the Supreme Court of Texas, which are plead by defendant and plaintiffs specially deny that the aforesaid legal proceedings in anywise bar or preclude the enforcement of any of the causes of action shown in plaintiffs' first amended original petition.

Wherefore plaintiffs pray judgment as in their first amended original petition.

## 8.

For replication to the allegations of paragraph XII of defendant's first amended original answer, plaintiffs say:

(1). The plaintiffs re-aver and adopt all the allegations of their previous replications to paragraphs VIII and IX of said answer.

(2). The plaintiffs deny the allegations contained in each of the followings sections of said paragraph XII, to-wit: paragraphs 2, 3, 4, 5, 6, 7, and 8.

## 9.

For replication to paragraph XIII of defendant's first amended original answer, plaintiffs say:

(1). Plaintiffs re-aver all the matters plead by them in replication to Sections VIII and IX of said answer.

(2). Plaintiffs deny the allegations contained in section 1 of said paragraph XIII.

And, having answered fully and specifically the allegations of defendant's first amended original answer, the plaintiffs pray the court to hear proof upon the issues

joined between plaintiffs and defendant and for judgment as prayed for in plaintiffs' first amended original petition.

A. G. GREENWOOD,  
CAMPBELL & SEWALL,  
JNO. C. BOX,  
R. O. WATKINS,  
PERKINS & PERKINS,  
JNO. B. GUINN,  
THOS. B. GREENWOOD,  
*Attorneys for Plaintiffs.*

THE STATE OF TEXAS,  
COUNTY OF ANDERSON,

I, Thos. B. Greenwood, do swear that I am one of the attorneys for plaintiffs in the above entitled cause and that the statements of fact relied upon as a defense by plaintiffs in the foregoing supplemental petition are believed by me to be true.

THOS. B. GREENWOOD.

Subscribed and sworn to before me this the 3d day of January, 1914.

(SEAL)

M. J. JACKSON,

Notary Public for Anderson County, Texas.

For Exhibit A, see p. 367.

Filed Jan. 7, 1914.

# **DEFENDANT'S FIRST SUPPLEMENTAL ANSWER.**

Filed Jan. 8, 1914.

IN THE DISTRICT COURT OF CHEROKEE  
COUNTY, TEXAS.

ANDERSON COUNTY ET AL

vs.

No. 6415.

INTERNATIONAL & GREAT NORTHERN  
RAILWAY COMPANY.

*To the Hon. Judge of said Court:*

Now comes the International & Great Northern Railway Company, defendant herein, and with leave of the

Court, files this its supplemental answer herein, in answer to plaintiffs' first supplemental petition, viz:

1. Defendant denies the allegations contained in subdivisions 23 and 24 of Section One of said first supplemental petition.

2. Defendant denies the allegations contained in Section Two of said first supplemental petition.

3. Defendant denies the allegations contained in Section Five, subdivision 3(b) of said first supplemental petition.

4. Defendant denies the allegations contained in Section Five, subdivision Six, of said first supplemental petition.

5. And now having answered the allegations contained in plaintiffs' first supplemental petition, defendant prays for the judgment of the Court as prayed in defendant's first amended original answer.

F. A. WILLIAMS, N. A. STEDMAN,  
ANDREWS, BALL & STREETMAN,  
MORRIS & SIMS, W. E. DONLEY,  
NORMAN, SHOOK & GIBSON,  
F. B. GUINN,  
WILSON, DABNEY & KING,  
*Attorneys for Defendant.*

THE STATE OF TEXAS,  
COUNTY OF CHEROKEE.

I, ....., one of the attorneys for defendant in the above entitled and numbered cause, do swear that I believe the statement of facts in the foregoing answer to be true.

.....  
Subscribed and sworn to before me this....day of  
....., 1914.

.....  
*District Clerk, Cherokee County, Texas.*

**DEFENDANT'S BILL OF EXCEPTION NO. 2a.****ANDERSON COUNTY ET AL.****vs.****I. & G. N. RAILWAY COMPANY.**

Filed Mar. 18, 1914.

BE IT REMEMBERED that before the presentation of demurrers in this case, and before the trial of this case before the jury, which was upon all issues of fact shown by the pleadings, except the plea in abatement and to the jurisdiction, the defendant, on the 7th of Jany., 1914, insisted upon a trial of its plea in abatement and to the jurisdiction contained in its First Amended Original Answer, being Section I thereof. Whereupon, it was agreed in open court by both the defendant and the plaintiffs that a jury should be waived upon the trial of said plea in abatement and to the jurisdiction without waiving the jury for the trial of the other issues, and that all matters raised by said plea should be tried before the judge without a jury, upon the facts as well as upon the law. Whereupon, the court proceeded to the trial of such plea in abatement and to the jurisdiction, and in support thereof the defendant introduced in evidence all of those matters stated in the Statement of Facts, as appears therein, and by page I to page IV (Roman figures) thereof, inclusive, preceding the statement of the matters introduced in evidence upon the jury trial; and the court having heard the evidence and considered said plea, was of the opinion that the same should not be sustained. Whereupon, the court overruled said plea, to which ruling of the court the defendant then excepted and took this its

Bill of Exception No. 2a, which it now presents, and prays that it be allowed.

N. A. STEDMAN,  
F. A. WILLIAMS,  
ANDREWS, BALL & STREETMAN,  
WILSON, DABNEY & KING,  
*Attorneys for Defendant.*

Approved:

T. B. GREENWOOD,  
*Atty. for Plffs.*

The foregoing agreed bill was this day presented to me and is by me in all things approved this 17th day of March, 1914.

A. E. DAVIS,  
*Judge.*

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### BILL OF EXCEPTION NO. 3.

ANDERSON COUNTY ET AL.

vs.

I. & G. N. RAILWAY COMPANY.

Filed Mar. 18, 1914.

BE IT REMEMBERED that on the trial of this case, and before the introduction of any parol testimony by the plaintiffs, the defendant moved the court to enforce the rule against the plaintiffs' witnesses, and remove them from the court room, under the terms of "the rules"; to which the plaintiffs assented, except that they insisted those persons should be excepted from the rule who were named in the petition as plaintiffs, and who would be called as witnesses, to wit: Wright, Ozment, Bowers and Hughes. Whereupon, the defendant pointed out that all of the citizens of Palestine were as much parties as those named in the petition, and that the parties suing, other than these named persons, who would not be used as wit-

nesses, could remain in the court room. Which motion being considered by the court, was by the court overruled. Whereupon, the defendant excepted to the ruling of the court, and took its Bill of Exceptions No. 3, and Wright, Bowers, Ozment and Hughes remained in the court room throughout the trial, and heard all of the testimony given therein, and each of them was present when the others testified, all as appears in the Statement of Facts in this case, on pages 28 and 29, under Section 8, and each thereafter testified. Wherefore, defendant presents this, its Bill of Exception No. 3, and prays that it may be allowed.

F. A. WILLIAMS,  
N. A. STEDMAN,  
ANDREWS, BALL & STREETMAN,  
WILSON, DABNEY & KING,  
*Attorneys for Defendant.*

Approved:

T. B. GREENWOOD,  
*Atty. for Plffs.*

This Agreed Bill No. 3 was this day presented to me, and is found correct, and in all things approved. March 17th, 1914.

A. E. DAVIS,  
*Judge Sitting on Trial of Above Case.*

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#### DEFENDANT'S BILL OF EXCEPTIONS NO. 4

ANDERSON COUNTY ET AL.

vs.

I. & G. N. RAILWAY COMPANY.

Filed Mar. 18, 1914.

BE IT REMEMBERED that upon the trial of this case, the witness Howard being on the stand, and called by the plaintiffs, that plaintiffs offered in evidence from minutes of the H. & G. N. Railroad Company its By-

Laws, approved December 4, 1871; to the introduction of portions of which relating to the Executive Board, and attempting to bestow any powers upon the Executive Board, the defendant objected that the same was inadmissible, because the Executive Board could not be substituted for the Board of Directors, and that any such attempt would be an infringement upon the powers which the law placed in the Board of Directors; and also to the introduction of any portion thereof bestowing powers upon the Executive Board, it was objected that no powers could be lodged in the executive officers for substitution of powers placed by law in the Board of Directors; which objections were overruled by the court, and the defendant excepted to this ruling and took this Bill of Exception No. 4; and over these objections the by-laws were read in evidence, being the same set out on pages 74 to 85 of the Statement of Facts, and the portions thereof objected to being part of Section 5 of Art. III, p. 79, St. F. (excepting contracts specially provided for from the approval of the Board of Directors at next meeting, when made by the president, if any such there were), and also Section 1 relating to the Chief Engineer on page 81 of the St. F., and also Sections 10, 11, 12, 13, 14 of Art. II of the by-laws, appearing on pages 77 and 78 of the St. F.

Wherefore, the defendant presents this bill No. 4, and prays that it be allowed.

N. A. STEDMAN,  
F. A. WILLIAMS,  
ANDREWS, BALL & STREETMAN,  
WILSON, DABNEY & KING,  
*Attorneys for Defendant.*

Approved:

T. B. GREENWOOD,  
*Atty. for Plffs.*

This Agreed Bill No. 4 was presented to me this 17th



day of March, 1914, and is in all things approved and allowed.

A. E. DAVIS,  
*Judge Presiding.*

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**DEFENDANT'S BILL OF EXCEPTION NO. 5**

ANDERSON COUNTY ET AL.

vs.

I. & G. N. RAILWAY COMPANY.

Filed Mar. 18, 1914.

BE IT REMEMBERED that upon the trial of this case the plaintiffs offered in evidence by-laws of the H. & G. N. Railroad Company, approved December 2, 1872, to all of which the defendant objected that the petition sets out an alleged contract as between Judge Reagan, Grow and Anderson County, alleged to have been entered into before the adoption of these by-laws; and also to the portions of said by-laws relating to the Executive Committee, objected that no powers could be lodged in the Executive Committee in substitution for the powers placed by law in the Board of Directors, which objections were overruled by the court, whereupon, the defendant excepted to this ruling and took this Bill 4, and over these objections the by-laws were read in evidence, the portions relating to the Executive Committee objected to being Section 11 of Art. II thereof, being the same as Section 10 of Art. II of the old by-laws, set out on page 77 of the St. F., all as appears on pages 85 to in 90, inclusive, of the St. F.

Wherefore, the defendant presents this Bill No. 5, and requests that the same be allowed.

N. A. STEDMAN,  
F. A. WILLIAMS,  
ANDREWS, BALL & STREETMAN,  
WILSON, DABNEY & KING,  
*Attorneys for Defendant.*

Approved:

T. B. GREENWOOD,  
*Atty. for Plffs.*

This Agreed Bill 5 is in all things approved and allowed this 17th day of March, A. D. 1914.

A. E. DAVIS,  
*Judge Presiding.*

### **DEFENDANT'S BILL OF EXCEPTION NO. 6.**

ANDERSON COUNTY ET AL.

vs.

I. & G. N. RAILWAY COMPANY.

Filed Mar. 18, 1914.

BE IT REMEMBERED that upon the trial of this case the plaintiffs offered in evidence, from the minutes of the H. & G. N. Railroad Company, two resolutions referred to and described below, passed by the Executive Committee of that road, of date Feby. 4th, 1873, and Jan. 11, 1873, respectively, to the introduction of which the defendant objected (1) that the matter offered was immaterial and irrelevant, it being an irrelevancy what expense Grow had been to in procuring donations of county bonds and lands to International and H. & G. N. Railroads, and could have no bearing upon the issues involved. (2) That it was out of due order to introduce such matter now, but that it was upon the plaintiffs, if such matter was admissible, at any time, which is not admitted, to

offer first, the contract with Anderson County in regard to the bond issue, all of which was in writing. (3) Defendant's counsel requested plaintiffs' counsel to hand to him the proceedings of the County Court of Anderson County in 1872, with reference to the election and the bond issue, including Shattuck's protest, and the whole matter, which, being handed to defendant's counsel, he exhibited the same to the court, it being the documents all hereinafter set out and introduced in evidence by the plaintiffs, and objected to the offered minutes further (4) that the law required all contracts with reference to issue of bonds by the county, in promotion of the railroad, to be in writing, and that no independent considerations or collateral matters not so in writing are admissible in evidence. (5) That the contract appears to have been formed by the county, as shown by the writings, in 1872, that over forty years have elapsed since that time, and it is now being attempted to be proved by parol, modification of the contract and not in writing, which collateral matters and parol modifications and conditions are inadmissible after this lapse, to add to or detract from the contract, which is in writing. (6) That the matter now offered in evidence is offered with a view of contradicting, and if it has any relevancy, is in direct conflict to the written documents, giving the history of the election exhibited to the court by the defendant's counsel, and which plaintiffs have possession of, and which they say they will offer in evidence, and which are complete in themselves, and consist of a written record not subject to modification, or conditions or variations by parol. (7) That the record of the election and the proceedings therein, and the bond issue made by the County of Anderson, and now exhibited to the court, are the proper adjudication and determination of the considerations on which the bonds were issued, and show the matter to be *res adjudicata*, and cannot be detracted from or added to in order to show that there was an independent or pre-

liminary contract in connection with such matter. (8) That if plaintiffs had any rights, such as they are attempting to show by parol, they were personal rights, exclusively against the H. & G. N. R. R. Co., consolidated with the I. & G. N. R. R. Company, and now sold out, as appears from the evidence already introduced, and sold out under a mortgage made in 1881, as already appears; and it further appearing that the plaintiffs are claiming under the act of 1889, and that by such subsequent act a burden was fixed upon the properties or property now held by the defendant, the plaintiffs are attempting to violate the obligation of their alleged contracts by adding thereto, and claiming a security under the act of 1889, and to violate the obligation of the mortgage of 1881, and the rights of the defendant as a purchaser under the foreclosure thereof by modifying their alleged contracts of 1872 and 1875, and adding a security thereto, as contended by them, under the act of 1889, all in violation of the obligation of such alleged contracts, and of the Fourteenth Amendment to the Constitution of the United States, and of Sub-section One of Section X of Article I of the Constitution of the United States of America, and also in violation of the Constitution of the State of Texas, whereby the act of 1889, or the application made of it to the facts of this case, would be unconstitutional and void in such attempt to secure an admittedly purely personal contract in 1889, as against the property, or any of the properties, now held by the defendant. (9) Further, the defendant objects that the proposed minutes offered were of the Executive Committee, and that, if these matters had any relevancy, they were conclusively within the power of the Board of Directors, and not of the Executive Committee, and that the Executive Committee had no power under the law or the charter to pass any such resolution.

Which objections were all overruled by the court, and the defendant then, to this ruling, in open court excepted

and took this its Bill No. 6, and over the objections the resolutions were read in evidence, being those of the dates stated, set out on page 96 of the St. F. Wherefore, the defendant presents this its Bill No. 6, and prays that it be allowed.

F. A. WILLIAMS,  
N. A. STEDMAN,  
ANDREWS, BALL & STREETMAN,  
WILSON, DABNEY & KING,  
*Attorneys for Defendant.*

Approved:

T. B. GREENWOOD,  
*Atty. for Plffs.*

This Agreed Bill No. 6 was presented to me this 17th day of March, 1914, and is in all things approved and allowed.

A. E. DAVIS,  
*Judge Presiding.*

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### DEFENDANT'S BILL OF EXCEPTION NO. 7.

ANDERSON COUNTY ET AL.

vs.

I. & G. N. RAILWAY COMPANY.

Filed Mar. 18, 1914.

BE IT REMEMBERED that upon the trial of this case, the plaintiffs offered in evidence the by-laws adopted by the I. & G. N. Railroad Company by its stockholders Sept. 24th and 27th, 1873, and in force up to June, 1875, and thereafter these by-laws and those of the H. & G. N. Railroad already introduced, being shown by the minutes to be all the by-laws of the H. & G. N. and the I. & G. N. up to June, 1875. Whereupon, the defendant objected to the introduction in evidence of a portion of the by-laws

referring to the Executive Committee, and that portion described below, on the ground that no powers therein attempted to be vested in the Executive Committee were powers so legally vested, but were powers vested by law and under the charters of the companies in the Board of Directors, and could not be legally exercised by the Executive Committee, which objections were overruled by the court, and the defendant excepted, and then took its Bill No. 7, and over the objections the by-laws were read in evidence, the portions objected to being Section 11 of Art. II, p. 98 of the St. of F., being the same as Section 10 of Art. 2 of the by-laws of the H. & G. N. Railroad set out on page 77 of the Statement of Facts. Wherefore, the defendant presents this its Bill 7, and prays that it be allowed.

F. A. WILLIAMS,  
N. A. STEDMAN,  
ANDREWS, BALL & STREETMAN,  
WILSON, DABNEY & KING,  
*Attorneys for Defendant.*

Approved:

T. B. GREENWOOD,  
*Atty. for Plffs.*

This Agreed Bill No. 7 was presented to me this 17th day of March, 1914, and is in all things approved and allowed.

A. E. DAVIS,  
*Judge Presiding.*

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**DEFENDANT'S BILL OF EXCEPTION NO. 8.**

ANDERSON COUNTY ET AL.

vs.

I. & G. N. RAILWAY COMPANY.

Filed Mar. 18, 1914.

BE IT REMEMBERED that upon the trial of this case the plaintiffs offered in evidence a certain resolu-

tion purporting to be of the directors of the I. & G. N. Railroad of date July 21, 1874, being a Joint Board of Directors of the H. & G. N. Railroad and International Railroad, consolidated into the I. & G. N. Railroad Company, which resolution is described below. To the introduction of which the defendant objected, making all of the objections set out in its Bill of Exception No. 6 herein taken and allowed; and also that the action of the joint board of the consolidated railroad was irrelevant, and that this transaction was subsequent to the alleged contract alleged to have been made by Grow.

Which objections being overruled the defendant accepted, and over these objections the resolution was read in evidence, being set out on page 100 of the St. F. Wherefore, the defendant presents this its Bill 8, and prays that it be allowed.

F. A. WILLIAMS,  
N. A. STEDMAN,  
ANDREWS, BALL & STREETMAN,  
WILSON, DABNEY & KING,  
*Attorneys for Defendant.*

Approved:

T. B. GREENWOOD,  
*Atty. for Plffs.*

This Agreed Bill 8 was presented to me this 17th day of March, 1914, and is in all things approved and allowed.

A. E. DAVIS,  
*Judge Presiding.*

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### DEFENDANT'S BILL OF EXCEPTION NO. 9.

ANDERSON COUNTY ET AL.

vs.

I. & G. N. RAILWAY COMPANY.

Filed Mar. 18, 1914.

BE IT REMEMBERED that upon the trial of this



case the plaintiffs offered in evidence a resolution adopted by the stockholders of the I. & G. N. Railroad Company on June 1st, 1881, ratifying a lease of that road to the M. K. & T. Railway Company, and also a certain agreement of date Nov. 26th, 1881, appearing upon the minutes of the I. & G. N. Railroad Company, signed by Huntington and Gould. Whereupon, the defendant objected to the introduction of the above lease and ratification of it and the Gould-Huntington contract, that they were immaterial and irrelevant. To which objection plaintiffs' counsel responded that he was offering these matters for the purpose of meeting the defendant's plea of limitations, setting up that the general offices had been moved to St. Louis in 1881, and remained there until in 1888, but the defendant insisted upon its objection that these matters were immaterial and irrelevant.

Whereupon, the court overruled the objection and the defendant then excepted and took this its Bill of Exception No. 9, and over the objections the matter objected to was read in evidence, being set out in the Statement of Facts herein, commencing with the bottom paragraph on page 101, and extending through the second paragraph on page 120. Wherefore, the defendant presents this its Bill 9, and prays that it be allowed.

F. A. WILLIAMS,  
N. A. STEDMAN,  
ANDREWS, BALL & STREETMAN,  
WILSON, DABNEY & KING,  
*Attorneys for Defendant.*

Approved:

T. B. GREENWOOD,  
*Atty. for Plffs.*

This Agreed Bill 9 was presented to me this 17th day of March, 1914, and is in all things approved and allowed.

A. E. DAVIS,  
*Judge Presiding.*

**DEFENDANT'S BILL OF EXCEPTION NO. 10.****ANDERSON COUNTY ET AL.**

vs.

**I. & G. N. RAILWAY COMPANY.**

Filed Mar. 18, 1914.

BE IT REMEMBERED that on the trial of this case the plaintiffs asked the witness Howard to show from the minutes who was the General Manager of the I. & G. N. Railroad during the Bonner-Eddy Receivership, and up to the death of Eddy, and whether or not Eddy, while he was such General Manager, did sign a confession of judgment in favor of Gould for a large sum against the I. & G. N. Railroad. To all of which the defendant objected that the matters offered were immaterial and irrelevant.

Which objections were overruled by the court, and the defendant then excepted to this ruling, and over the objection, the witness testified from the minutes as appears on page 121 thereof. Wherefore, the defendant presents this its Bill 10, and prays that it be allowed.

N. A. STEDMAN,

F. A. WILLIAMS,

ANDREWS, BALL &amp; STREETMAN,

WILSON, DABNEY &amp; KING,

*Attorneys for Defendant.*

Approved:

T. B. GREENWOOD,

*Atty. for Plffs.*

This Agreed Bill 10 was presented to me this 17th day of March, 1914, and is in all things approved and allowed.

A. E. DAVIS,

*Judge Presiding.*

**DEFENDANT'S BILL OF EXCEPTION NO. 11.**

ANDERSON COUNTY ET AL.

vs.

I. &amp; G. N. RAILWAY COMPANY.

Filed Mar. 18, 1914.

BE IT REMEMBERED that on the trial of this case Wright, one of the plaintiffs, was called as a witness by the plaintiffs, having been, along with his co-plaintiffs Ozment, Bowers and Hughes, over the objection of the defendant, excused from the rule as shown by Bill of Exception No. 3 already allowed, and Wright being sworn and tendered as a witness, the defendant not waiving its Bill No. 3, but subject to the same, moved the court to exclude from the court room and place under "the rule" Ozment, Bowers and Hughes, while Wright was testifying, and so to exclude from the court room when any of these four persons was testifying, the other three, the plaintiffs stating that they would put all of these four persons upon the witness stand, the ground of the motion being that it appeared that Wright and each of these witnesses would be tendered to give parol testimony in support of an alleged transaction claimed to have been entered into in parol over forty years ago; all of the citizens of Palestine being plaintiffs in the case, and because, on account of the great lapse of time, one of these men listening to the other testify, might have his mind swayed and impressed with what testimony he should give, and that it would be an abuse of the court's discretion not to enforce the rule, and instruct these witnesses according to the practice, and exclude them from the court room, at least while any of the four was testifying, all as appears in the Statement of Facts, p. 148; and this motion was overruled by the court, and the defendant then excepted and took its Bill No. 11, and over this objection, Wright, Ozment, Bowers and Hughes all gave their testimony in the presence and hearing of

each other; Wright, Ozment and Hughes all testifying to a certain speech alleged to have been made by Grow, and Wright and Ozment, in addition, testifying to a certain alleged transaction with Hoxie and Wright in addition to an interview between Judge Reagan and Grow, and action thereon; all as appears in St. F., pages 148-207, 224-237, 223-224, 262-264, 210-211.

Wherefore, the defendant presents this its Bill 11, and prays that it be allowed.

N. A. STEDMAN,  
F. A. WILLIAMS,  
ANDREWS, BALL & STREETMAN,  
WILSON, DABNEY & KING,  
*Attorneys for Defendant.*

Approved:

T. B. GREENWOOD,  
*Atty. for Plffs.*

This Agreed Bill 11 was presented to me this 17th day of March, 1914, and is in all things approved and allowed.

A. E. DAVIS,  
*Judge Presiding.*

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**DEFENDANT'S BILL OF EXCEPTION NO. 12.**

ANDERSON COUNTY ET AL.

vs.

I. & G. N. RAILWAY COMPANY.

Filed Mar. 18, 1914.

BE IT REMEMBERED that on the trial of this case the witness Wright was called by the plaintiffs, and having testified that he was present at a stated meeting between Grow, Noble and Judge Reagan on the occasion when the alleged contract stated in the pleadings to have been made in March, 1872, by Grow as President of the Houston and Great Northern Railroad, and Judge Rea-

gan, representing the citizens of Palestine, was entered on, was then asked to state what took place between Judge Reagan and Mr. Grow in his presence at such meeting, and the presence of Noble, and what was said and done on such occasion; and also what was said and done in that connection at the witness' livery stable the next morning after the meeting at Judge Reagan's house, and whether or not Judge Reagan made a canvass of the county in support of the bond issue; this testimony being offered in support of the alleged contract by the plaintiffs set out as having been formed in March, 1872. Whereupon, to these questions, and to any testimony thereunder, the defendant objected as follows:

(1) That it now developed, as shown by the contract with the County introduced by the plaintiffs that there was a complete and perfectly legal written contract between Anderson County, Texas, and the H. & G. N. R. R., required by law to be in writing, and which could only legally be formed in writing, which, as shown by the petition, it was proposed to modify, add to, change, or vary by parol testimony; and that such writing being complete in itself could not be so modified, changed, varied or added to. (2) That the testimony offered as to what Judge Reagan said and what Grow said and others said was hearsay. (3) That the testimony is offered, as appears by the pleadings and the statement now made by the plaintiffs, in support of a contract alleged to have been made in behalf of the citizens of Palestine acting by Judge Reagan, upon an illegal consideration, to wit: Judge Reagan's alleged undertaking to induce and influence the voters of the county to vote a bond issue, the alleged consideration to the railroad being solely the engagement of Judge Reagan to induce and advocate such a bond issue. (4) That the evidence is offered for the purpose of showing an agreement or an alleged contract, in promotion of a County contract, and to attach to the County contract, which is in writing, an alleged promotion contract, which, if made, would be upon an

illegal consideration and is prohibited by law and public policy. (5) That after the lapse of over 40 years it is not permissible to prove, in connection with a written contract with the County and the public, what were the inducements or considerations or representations outside of the written contract there were upon which it was made, nor can a written contract adopted by the voters be so modified. (6) That it appears from the pleadings, and tender of the testimony, that it is now proposed to show that Judge Reagan's services were hired to induce and influence the voters of Anderson County to vote a bond issue, on inducements outside of the writings, that the shops and general offices were to be erected in Palestine for the benefit of the people of Palestine, as contradistinguished from the people of the County, and that it would have been illegal to arrange to bestow such benefits upon the people of part of the county as contradistinguished from the people of all of the county. (7) That the proposed agreement, as plead and as proposed to be testified to in parol, if legal and provable under the law, which is denied, would have to be in writing, and comes within the terms of the statute of frauds, which is now invoked; and therefore it is not provable in parol. (8) That after the lapse of over 40 years and after rights had been acquired and acted upon by various parties, on the basis of the written contract and agreement already introduced, it is not permissible to prove by parol the alleged contract. (8a) That a record of the transaction with the County introduced by plaintiffs, showed the judgment of the County Court settling the whole matter and the considerations for the contract, adjudged to have been performed by the railroad, whereby the matter was *res adjudicata*, and the parties estopped. (9) That there is no evidence that Grow had any authority to make any agreement, such as is proposed to be shown by parol, because the law lodged the authority to make any such agreement, if it could be made at all, wholly with the board of directors, and, furthermore, that there

is no evidence whatsoever of the ratification of such an agreement, which ratification could only be by the board of directors. (10) That the testimony would be immaterial and irrelevant. (11) It appears by the decree of foreclosure of the sold out International & Great Northern Railroad Company in May, 1910, and introduced by the plaintiffs, that all of the issues involved in said proposed testimony were settled, and if not settled were reserved exclusively for the United States Court. (12) The plaintiffs rely upon the act of the Legislature of Texas of 1889, carried into articles 6423-4-5 of the present Revised Statutes of Texas, and are now claiming that by such act, long subsequent to the alleged contract which they plead in this case, a lien, burden, or servitude were fixed upon the property or properties, or some of them, of the sold out I. & G. N. R. R., which have been acquired by this defendant; without which lien or burden they can not recover; and in that by this statute and its terms they are extending and attempting to burden and add to the alleged contracts in its extensions and purported obligations, by going beyond the alleged contracts, whereby it appears, when applied to the facts of this case, that such act of 1889, as so construed, is unconstitutional and void and violates sub-section one of section X of article one of the Constitution of the United States, prohibiting any State from passing a law impairing the obligation of contracts. The plaintiffs claiming that their alleged personal contract so became secured first in 1889, and that in 1889 the statute placed other obligations on the alleged contracts, and not included in the contracts. (13) Because said act of the legislature of 1889 violates sub-section one of section X of article one of the Constitution of the United States and impairs the obligation of contracts when, and as construed by the plaintiffs and plead by them; without which construction and application they cannot recover; in that it appears, from the decree of foreclosure and evidence introduced by them, that the I. & G. N. R. R. was sold out under a mortgage termed



the second mortgage, issued in 1881; that the defendant is the assignee and holder as purchaser of all the rights whatsoever accruing to the mortgagees; and further, as to any obligations, claimed by the plaintiffs to have been imposed by the act of 1889 (all of which were additions to and burdens upon the alleged contract asserted by plaintiffs) they are, in violation of said mortgage, attempting to make prior in law rights which were junior in time, if any such rights existed, all of which is in violation of the Constitution of the United States, here and now invoked. (14) It appears that the plaintiffs rely upon said State act of 1889, as construed by them, which act is in violation, when so construed, of section one of article XIV of the Amendments to the Constitution of the United States, commonly called the XIV Amendment; in that such statute imposes great penalties; and in that the insistence that the statute is applicable to the defendant, constitutes an attempt to abridge the privileges and immunities of the defendant and to deprive it of its property without due process of law, and to deny it the equal protection of the law by penalizing or threatening to penalize it at the rate of \$5,000 a day, and further penalize it, if it should resort to the courts to resist this action and litigate its rights by refusing to obey such unconstitutional statute. (15) The plaintiffs can not recover, as admitted by them, without the aid of said State Statute of 1889, which statute, as applied by them, is void and unconstitutional and violates section one of article 14 of the Amendments to the Constitution of the United States; in that it is an undue interference with the business and obligations of the defendant, which it owes to the public in state and interstate commerce; whereby it attempts to interfere with the lawful discretion and power of the defendant to conduct its business within the limits of the law; and whereby it attempts, by subsequent statute, to place burdens and liens and additions on and securing personal contracts as claimed by the plaintiffs, thereby denying to this defendant the equal

protection of the law and taking its property without due process of law by such illegal interference. (16) That the said act of 1889 of Texas, as applied, is unconstitutional and void, and yet without it the plaintiffs can not recover; in that such act is applicable only to chartered railroads and not applicable to individuals, receivers or other persons operating as railroad carriers, or to other persons or corporations whatsoever, and so violates section one of article XIV of the Amendments to the Constitution of the United States, being legislation against a species or class, not rightly classified on any legal ground; and in that it places a burden upon the species or class not placed upon other persons and corporations classifiable with it; thereby violating the prohibition of denying to any persons "the equal protection of the laws," and abridging the privileges and immunities of the defendant and depriving it of its property without due process of law. (17) The plaintiffs rely upon the said act of 1889, which is claimed by them to secure their alleged contracts in this case, which as applied, is illegal and void and contrary to the Constitution of the State of Texas: (a) because the same assesses a penalty of an amount prohibited by the Constitution; (b) because the statute as construed and pleaded is retroactive; (c) because the plaintiffs seek to recover in violation of the obligations and terms of the alleged contracts on which they sue and in violation of the mortgage contract, of the sold out railroad, made in 1881; (d) because such statute is *ex post facto* and pronounces penalties, and therein is contrary to the Constitution of the United States, as well as that of the state; (e) because as construed by plaintiffs the statute denies to the defendant the equal protection of the law and is violative of the due process of law; (f) because such statute as construed by the plaintiffs, and without which construction they can not prevail, is an attempt to place on this defendant, never assuming the same, alleged obligations of the sold out I. & G. N. R. R. or its predecessors, and which were personal to them. (17a) Because the plaintiffs alleged and attempted to

prove a contract binding "forever," the law and Constitution not permitting properties and obligations to be bound up or enforced "forever," and the alleged contracts being as claimed forever, or indeterminate, are terminable at option, if contracts at all, which is not admitted. (18) Because the plaintiffs have introduced the conveyance of the properties of the sold out railroad to this defendant, and also its charter and the decree of foreclosure under which the properties were sold, from which it appears that the defendant bought free of all the obligations now asserted by the plaintiffs. (19) Because plaintiffs have introduced the charter of the defendant, from which it appears the general offices are located at Houston, Texas, and the charter being legally issued, the defendant is bound to maintain its general offices at Houston, Texas. (20) Because it also appears that the H. & G. N. R. R.'s charter, introduced by the plaintiffs, required said offices to be at Houston, Texas, and the charter of the International, introduced by plaintiffs, not designating a definite place for the offices, and the two roads consolidated under act of 1889, the offices are obligated to be kept at Houston, Texas.

And the foregoing objections being argued, were submitted to the court, and were by him all overruled. Whereupon, the defendant excepted to this ruling and took its Bill No. 12, and over the defendant's objections, the witness testified as appears in the Statement of Facts, commencing with the third line from the top of page 155, and continuing to the paragraph commencing below the middle of page 158. Wherefore, the defendant presents this its Bill No. 12, and prays that it be allowed.

F. A. WILLIAMS,  
N. A. STEDMAN,  
ANDREWS, BALL & STREETMAN,  
WILSON, DABNEY & KING,

*Attorneys for Defendant.*

Approved:

T. B. GREENWOOD,  
*Atty. for Plffs.*

This Agreed Bill 12 was presented to me this 17th day of March, 1914, and is in all things approved and allowed.

A. E. DAVIS,  
*Judge Presiding.*

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**DEFENDANT'S BILL OF EXCEPTION NO. 13.**

ANDERSON COUNTY ET AL.

vs.

I. & G. N. RAILWAY COMPANY.

Filed Mar. 18, 1914.

BE IT REMEMBERED that on the trial of this case, the witness Wright being upon the stand, was asked whether or not Judge Reagan made a canvass of Anderson County in support of the bond issue; to which the defendant objected, being the objections included in its Bill of Exception 12, already approved, and also that this would be hearsay. To which the plaintiffs replied that they did not propose to show any declarations made by Judge Reagan, but merely that he made a canvass; but the defendant insisted upon its objection, which was overruled by the court, and the defendant then excepted, taking its Bill No. 13, and over the same the witness testified as appears upon page 158 of the Statement of Facts, extending to the paragraph commencing below the middle of the page. Wherefore, the defendant presents this its Bill 13, and prays that it be allowed.

N. A. STEDMAN,  
F. A. WILLIAMS,  
ANDREWS, BALL & STREETMAN,  
WILSON, DABNEY & KING,  
*Attorneys for Defendant.*

Approved:

T. B. GREENWOOD,  
*Atty. for Plffs.*

This Agreed Bill 13 was presented to me this 17th day of March, 1914, and is in all things approved and allowed.

A. E. DAVIS,  
*Judge Presiding.*

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**DEFENDANT'S BILL OF EXCEPTION NO. 14.**

ANDERSON COUNTY ET AL.

vs.

I. & G. N. RAILWAY COMPANY.

Filed Mar. 18, 1914.

BE IT REMEMBERED that on the trial of this case the witness Wright being on the stand, called by the plaintiffs, the plaintiffs announced that they proposed to show by him what Grow said in his speech at Palestine, with reference to the contract alleged in their pleading to have been made between Grow and Reagan, the speech being proposed to be shown to have been made just about two days before the bond election, which took place on the first three or four days in May, 1872, in Palestine, the only voting place in the county on this bond issue, and they then asked Wright to state what Grow said in that speech. Whereupon, the defendant objected as follows:

(1) That it now developed, as shown by the contract with the County introduced by the plaintiffs, that there was a complete and perfectly legal written contract between Anderson County, Texas, and the H. & G. N. R. R., required by law to be in writing, and which could only legally be formed in writing, which, as shown by the petition, it was proposed to modify, add to, change, or vary by parol testimony; and that such writing being complete in itself could not be so modified, changed, varied or added to. (2) That the testimony offered as to what Judge Reagan said and what Grow said and others said

was hearsay. (3) That the testimony is offered, as appears by the pleadings and the statement now made by the plaintiffs, in support of a contract alleged to have been made in behalf of the citizens of Palestine acting by Judge Reagan upon an illegal consideration, to wit: Judge Reagan's alleged undertaking to induce and influence the voters of the county to vote a bond issue, the alleged consideration to the railroad being solely the engagement of Judge Reagan to induce and advocate such a bond issue. (4) That the evidence is offered for the purpose of showing an agreement or an alleged contract, in promotion of a County contract, and to attach to the County contract, which is in writing, an alleged promotion contract, which, if made, would be upon an illegal consideration and is prohibited by law and public policy. (5) That after the lapse of over 40 years it is not permissible to prove, in connection with a written contract with the County and the public, what were the inducements or considerations or representations outside of the written contract there were upon which it was made, nor can a written contract adopted by the voters be so modified. (6) That it appears from the pleadings, and tender of the testimony, that it is now proposed to show that Judge Reagan's services were hired to induce and influence the voters of Anderson County to vote a bond issue, on inducements outside of the writings, that the shops and general offices were to be erected in Palestine for the benefit of the people of Palestine, as contradistinguished from the people of the County, and that it would have been illegal to arrange to bestow such benefits upon the people of part of the county as contradistinguished from the people of all of the county. (7) That the proposed agreement, as plead and as proposed to be testified to in parol, if legal and provable under the law, which is denied, would have to be in writing, and comes within the terms of the statute of frauds, which is now invoked; and therefore it is not provable in parol. (8)

That after the lapse of over 40 years and after rights had been acquired and acted upon by various parties, on the basis of the written contract and agreement already introduced, it is not permissible to prove by parol the alleged contract. (8a) That a record of the transaction with the County introduced by plaintiffs, showed the judgment of the County Court settling the whole matter and the consideration for the contract, adjudged to have been performed by the railroad, whereby the matter was *res adjudicata*, and the parties estopped. (9) That there is no evidence that Grow had any authority to make any agreement, such as is proposed to be shown by parol, because the law lodged the authority to make any such agreement, if it could be made at all, wholly with the board of directors, and, furthermore, that there is no evidence whatsoever of the ratification of such an agreement, which ratification could only be by the board of directors. (10) That the testimony would be immaterial and irrelevant. (11) It appears by the decree of foreclosure of the sold out International & Great Northern Railroad Company in May, 1910, and introduced by the plaintiffs, that all of the issues involved in said proposed testimony were settled, and if not settled, were reserved exclusively for the United States Court. (12) The plaintiffs rely upon the act of the Legislature of Texas of 1889, carried into articles 6423-4-5 of the present Revised Statutes of Texas, and are now claiming that by such act, long subsequent to the alleged contract which they plead in this case, a lien, burden, or servitude were fixed upon the property or properties, or some of them, of the sold out I. & G. N. R. R., which have been acquired by this defendant; without which lien or burden they can not recover; and in that by this statute and its terms they are extending and attempting to burden and add to the alleged contracts in its extensions and purported obligations, by going beyond the alleged contracts, whereby it appears, when applied to the facts of this case,



that such act of 1889, as so construed, is unconstitutional and void and violates sub-section one of section X of article one of the Constitution of the United States, prohibiting any State from passing a law impairing the obligation of contracts. The plaintiffs claiming that their alleged personal contract so became secured first in 1889, and that in 1889 the statute placed other obligations on the alleged contracts, and not included in the contracts. (13) Because said act of the legislature of 1889 violates sub-section one of section X of article one of the Constitution of the United States and impairs the obligation of contracts when, and as construed by the plaintiffs and plead by them; without which construction and application they can not recover; in that it appears, from the decree of foreclosure and evidence introduced by them, that the I. & G. N. R. R. was sold out under a mortgage termed the second mortgage, issued in 1881; that the defendant is the assignee and holder as purchaser of all the rights whatsoever accruing to the mortgagees; and further, as to any obligations, claimed by the plaintiffs to have been imposed by the act of 1889 (all of which were additions to and burdens upon the alleged contract asserted by plaintiffs) they are, in violation of said mortgage, attempting to make prior in law rights which were junior in time, if any such rights existed, all of which is in violation of the Constitution of the United States, here and now invoked. (14) It appears that the plaintiffs rely upon said State act of 1889, as construed by them, which act is in violation, when so construed, of section one of article XIV of the Amendments to the Constitution of the United States, commonly called the XIV Amendment; in that such statute imposes great penalties; and in that the insistence that the statute is applicable to the defendant, constitutes an attempt to abridge the privileges and immunities of the defendant and to deprive it of its property without due process of law, and to deny it the equal protection of the law by penalizing or threatening

to penalize it at the rate of \$5000 a day, and further penalize it, if it should resort to the courts to resist this action and litigate its rights by refusing to obey such unconstitutional statute. (15) The plaintiffs can not recover, as admitted by them, without the aid of said State Statute of 1889, which statute, as applied by them, is void and unconstitutional and violates section one of article 14 of the Amendments to the Constitution of the United States; in that it is an undue interference with the business and obligations of the defendant, which it owes to the public in state and interstate commerce; whereby it attempts to interfere with the lawful discretion and power of the defendant to conduct its business within the limits of the law; and whereby it attempts, by subsequent statute, to place burdens and liens and additions on and securing personal contracts as claimed by the plaintiffs, thereby denying to this defendant the equal protection of the law and taking its property without due process of law by such illegal interference. (16) That the said act of 1889 of Texas, as applied, is unconstitutional and void, and yet without it the plaintiffs cannot recover; in that such act is applicable only to chartered railroads and not applicable to individuals, receivers or other persons operating as railroad carriers, or to other persons or corporations whatsoever, and so violates section one of article XIV of the Amendments to the Constitution of the United States, being legislation against a species or class, not rightly classified on any legal ground; and in that it places a burden upon the species or class not placed upon other persons and corporations classifiable with it; thereby violating the prohibition of denying to any persons "the equal protection of the laws," and abridging the privileges and immunities of the defendant and depriving it of its property without due process of law. (17) The plaintiffs rely upon the said act of 1889, which is claimed by them to secure their alleged contracts in this case, which, as applied, is illegal

and void and contrary to the Constitution of the State of Texas: (a) because the same assesses a penalty of an amount prohibited by the Constitution; (b) because the statute as construed and pleaded is retroactive; (c) because the plaintiffs seek to recover in violation of the obligations and terms of the alleged contracts on which they sue and in violation of the mortgage contract, of the sold out railroad, made in 1881; (d) because such statute is *ex post facto* and pronounces penalties, and therein is contrary to the Constitution of the United States, as well as that of the State; (e) because as construed by plaintiffs the statute denies to the defendant the equal protection of the law and is violative of the due process of law; (f) because such statute as construed by the plaintiffs, and without which construction they can not prevail, is an attempt to place on this defendant, never assuming the same, alleged obligations of the sold out I. & G. N. R. R. or its predecessors, and which were personal to them. (17a) Because the plaintiffs alleged and attempted to prove a contract binding "forever," the law and Constitution not permitting properties and obligations to be bound up or enforced "forever," and the alleged contracts being as claimed forever, or indeterminate, are terminable at option, if contracts at all, which is not admitted. (18) Because the plaintiffs have introduced the conveyance of the properties of the sold out railroad to this defendant, and also its charter and the decree of foreclosure under which the properties were sold, from which it appears that the defendant bought free of all the obligations now asserted by the plaintiffs. (19) Because plaintiffs have introduced the charter of the defendant, from which it appears the general offices are located at Houston, Texas, and the charter being legally issued, the defendant is bound to maintain its general offices at Houston, Texas. (20) Because it also appears that the H. & G. N. R. R.'s charter, introduced by the plaintiffs, required said offices to be at Houston, Texas,

and the charter of the International, introduced by plaintiffs, not designating a definite place for the offices, and the two roads consolidated under act of 1889, the offices are obligated to be kept at Houston, Texas.

And also, as follows: (1) That a contract agreement cannot be made by campaign speeches; and campaign and electioneering promises and statements were inadmissible in order to show what the contract was, or to add to, modify, or change the same. (2) That the testimony was hearsay. (3) That it is not introduceable after this immense lapse of time. (4) That if admitted in evidence, it is a statement which would not bind the defendant, which had purchased the property under foreclosure mortgage of 1881, as shown by the evidence. (5) That it was not shown that Grow had any authority to make such contract or agreement, if any there was. (6) That the admissions of Grow, if any, as an agent, were not now provable.

And thereupon, the objections having been made, at the request of plaintiffs' counsel, the court stated to the jury that the testimony, with regard to what Grow may have said in his speech in front of the court house at Palestine, was only admitted to be considered by the jury in determining whether there was a contract between the citizens of Palestine and the Railroad Company, as alleged by the plaintiffs, and not with Anderson County, and that they should not consider such testimony for any other purpose.

And thereupon, the court overruled all of the defendant's objections. Whereupon, the defendant, in view of the court's statement, renewed each and all of them, and the court again overruled all of these objections, and the defendant excepted and took its Bill No. 14, and over these objections the witness Wright testified as to what he said Grow stated in the speech mentioned; all as appears commencing on the tenth line from the bottom of page 159, and extending into the 7th line from bot-

tom of page 160 of the Statement of Facts. Wherefore, the defendant presents this its Bill of Exception No. 14, and prays that it be allowed.

F. A. WILLIAMS,  
N. A. STEDMAN,  
ANDREWS, BALL & STREETMAN,  
WILSON, DABNEY & KING,  
*Attorneys for Defendant.*

Approved:

T. B. GREENWOOD,  
*Atty. for Plffs.*

This Agreed Bill 14 was presented to me this 17th day of March, 1914, and is in all things approved and allowed.

A. E. DAVIS,  
*Judge Presiding.*

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### DEFENDANT'S BILL OF EXCEPTION NO. 15.

ANDERSON COUNTY ET AL.

vs.

I. & G. N. RAILWAY COMPANY.

Filed Mar. 18, 1914.

BE IT REMEMBERED that upon the trial of this case, the witness Wright being upon the stand, testified that he saw Grow, the President of the H. & G. N., when he came to Palestine to get the bonds issued by Anderson County to the H. & G. N., and that Grow asked him to go to the County Court with him, which he, witness, stated he did. The witness was next asked to state what took place between Grow and the court, and what Grow told the court when he presented his written application to the court for the bonds already in evidence as part of the record of the bond issue. To all of which the defendant objected as follows:

- (1) That it now developed, as shown by the contract

with the County introduced by the plaintiffs, that there was a complete and perfectly legal written contract between Anderson County, Texas, and the H. & G. N. R. R., required by law to be in writing, and which could only legally be formed in writing, which, as shown by the petition, it was proposed to modify, add to, change, or vary by parol testimony; and that such writing being complete in itself could not be so modified, changed, varied or added to. (2) That the testimony offered as to what Judge Reagan said and what Grow said and others said was hearsay. (3) That the testimony is offered, as appears by the pleadings and the statement now made by the plaintiffs, in support of a contract alleged to have been made in behalf of the citizens of Palestine acting by Judge Reagan upon an illegal consideration, to wit: Judge Reagan's alleged undertaking to induce and influence the voters of the county to vote a bond issue, the alleged consideration to the railroad being solely the engagement of Judge Reagan to induce and advocate such a bond issue. (4) That the evidence is offered for the purpose of showing an agreement or an alleged contract, in promotion of a County contract, and to attach to the County contract, which is in writing, an alleged promotion contract, which, if made, would be upon an illegal consideration and is prohibited by law and public policy. (5) That after the lapse of over 40 years it is not permissible to prove, in connection with a written contract with the County and the public, what were the inducements or considerations or representations outside of the written contract there were upon which it was made, nor can a written contract adopted by the voters be so modified. (6) That it appears from the pleadings, and tender of the testimony, that it is now proposed to show that Judge Reagan's services were hired to induce and influence the voters of Anderson County to vote a bond issue, on inducements outside of the writings, that the shops and general offices were to be erected in Pal-

estine for the benefit of the people of Palestine, as contradistinguished from the people of the County, and that it would have been illegal to arrange to bestow such benefits upon the people of part of the county as contradistinguished from the people of all of the county. (7) That the proposed agreement, as plead and as proposed to be testified to in parol, if legal and provable under the law, which is denied, would have to be in writing, and comes within the terms of the statute of frauds, which is now invoked; and therefore it is not provable in parol. (8) That after the lapse of over 40 years and after rights had been acquired and acted upon by various parties, on the basis of the written contract and agreement already introduced, it is not permissible to prove by parol the alleged contract. (8a) That a record of the transaction with the County introduced by plaintiffs, showed the judgment of the County Court settling the whole matter, and the considerations for the contract, adjudged to have been performed by the railroad, whereby the matter was *res adjudicata*, and the parties estopped. (9) That there is no evidence that Grow had any authority to make any agreement, such as is proposed to be shown by parol, because the law lodged the authority to make any such agreement, if it could be made at all, wholly with the board of directors, and, furthermore, that there is no evidence whatsoever of the ratification of such an agreement, which ratification could only be by the board of directors. (10) That the testimony would be immaterial and irrelevant. (11) It appears by the decree of foreclosure of the sold out International & Great Northern Railroad Company in May, 1910, and introduced by the plaintiffs, that all of the issues involved in said proposed testimony were settled, and if not settled were reserved exclusively for the United States Court. (12) The plaintiffs rely upon the act of the Legislature of Texas of 1889, carried into articles 6423-4-5 of the present Revised Statutes of Texas, and are now claiming that by



such act, long subsequent to the alleged contract which they plead in this case, a lien, burden, or servitude were fixed upon the property or properties, or some of them, of the sold out I. & G. N. R. R., which have been acquired by this defendant; without which lien or burden they cannot recover; and in that by this statute and its terms they are extending and attempting to burden and add to the alleged contracts in its extensions and purported obligations, by going beyond the alleged contracts, whereby it appears, when applied to the facts of this case, that such act of 1889, as so construed, is unconstitutional and void and violates sub-section one of section X or article one of the Constitution of the United States, prohibiting any State from passing a law impairing the obligation of contracts. The plaintiffs claiming that their alleged personal contract so became secured first in 1889, and that in 1889 the statute placed other obligations on the alleged contracts, and not included in the contracts.

(13) Because said act of the legislature of 1889 violates sub-section one of section X of article one of the Constitution of the United States and impairs the obligation of contracts when, and as construed by the plaintiffs and plead by them; without which construction and application they cannot recover; in that it appears, from the decree of foreclosure and evidence introduced by them, that the I. & G. N. R. R. was sold out under a mortgage termed the second mortgage, issued in 1881; that the defendant is the assignee and holder as purchaser of all the rights whatsoever accruing to the mortgagees; and further, as to any obligations, claimed by the plaintiffs to have been imposed by the act of 1889 (all of which were additions to and burdens upon the alleged contract asserted by plaintiffs) they are, in violation of said mortgage, attempting to make prior in law rights which were junior in time, if any such rights existed, all of which is in violation of the Constitution of the United States, here and now invoked. (14) It appears that the plaintiffs rely

upon said State act of 1889, as construed by them, which act is in violation, when so construed, of section one of article XIV of the Amendments to the Constitution of the United States, commonly called the XIV Amendment; in that such statute imposes great penalties; and in that the insistence that the statute is applicable to the defendant, constitutes an attempt to abridge the privileges and immunities of the defendant and to deprive it of its property without due process of law, and to deny it the equal protection of the law by penalizing or threatening to penalize it at the rate of \$5000 a day, and further penalize it, if it should resort to the courts to resist this action and litigate its rights by refusing to obey such unconstitutional statute. (15) The plaintiffs cannot recover, as admitted by them, without the aid of said State Statute of 1889, which statute, as applied by them, is void and unconstitutional and violates section one of article 14 of the Amendments to the Constitution of the United States; in that it is an undue interference with the business and obligations of the defendant, which it owes to the public in state and interstate commerce; whereby it attempts to interfere with the lawful discretion and power of the defendant to conduct its business within the limits of the law; and whereby it attempts, by subsequent statute, to place burdens and liens and additions on and securing personal contracts as claimed by the plaintiffs, thereby denying to this defendant the equal protection of the law, and taking its property without due process of law by such illegal interference. (16) That the said act of 1889 of Texas, as applied, is unconstitutional and void, and yet without it the plaintiffs cannot recover; in that such act is applicable only to chartered railroads and not applicable to individuals, receivers or other persons operating as railroad carriers, or to other persons or corporations whatsoever, and so violates section one of article XIV of the Amendments to the Constitution of the United States, being legislation against

a species or class, not rightly classified on any legal ground; and in that it places a burden upon the species or class not placed upon other persons and corporations classifiable with it; thereby violating the prohibition of denying to any persons "the equal protection of the laws," and abridging the privileges and immunities of the defendant and depriving it of its property without due process of law. (17) The plaintiffs rely upon the said act of 1889, which is claimed by them to secure their alleged contracts in this case, which as applied, is illegal and void and contrary to the Constitution of the State of Texas: (a) because the same assesses a penalty of an amount prohibited by the Constitution; (b) because the statute as construed and pleaded is retroactive; (c) because the plaintiffs seek to recover in violation of the obligations and terms of the alleged contracts on which they sue, and in violation of the mortgage contract, of the sold out railroad, made in 1881; (d) because such statute is *ex post facto* and pronounces penalties, and therein is contrary to the Constitution of the United States, as well as that of the State; (e) because as construed by plaintiffs the statute denies to the defendant the equal protection of the law and is violative of the due process of law; (f) because such statute as construed by the plaintiffs, and without which construction they cannot prevail, is an attempt to place on this defendant, never assuming the same, alleged obligations of the sold out I. G. N. R. R. or its predecessors, and which were personal to them. (17a) Because the plaintiffs alleged and attempted to prove a contract binding "forever," the law and Constitution not permitting properties and obligations to be bound up or enforced "forever," and the alleged contracts being as claimed forever, or indeterminate, are terminable at option, if contracts at all, which is not ad-

mitted. (18) Because the plaintiffs have introduced the conveyance of the properties of the sold out railroad to this defendant, and also its charter and the decree of foreclosure under which the properties were sold, from which it appears that the defendant bought free of all the obligations now asserted by the plaintiffs. (19) Because plaintiffs have introduced the charter of the defendant, from which it appears the general offices are located at Houston, Texas, and the charter being legally issued, the defendant is bound to maintain its general offices at Houston, Texas. (20) Because it also appears that the H. & G. N. R. R.'s charter, introduced by the plaintiffs, required said offices to be at Houston, Texas, and the charter of the International, introduced by plaintiffs, not designating a definite place for the offices, and the two roads consolidated under act of 1889, the offices are obligated to be kept at Houston, Texas.

And also, the defendant objected that the obligations between the county and the railroad company were fixed, when Grow applied for the bonds, the election having been held and the railroad built in, and that the contract was not subject to modifications and there could not have been at that time any consideration either way for additional contracts; and also, that the record and judgment of the County Court introduced by the plaintiffs declared that the railroad had already performed its obligations, and that such judgment could not be impeached.

Which objections being considered by the court were all overruled, and the defendant excepted, and took its Bill No. 15, and over the objections, the witness testified as appears, commencing on the third line from the bottom of page 161, and extending on page 162 to the paragraph commencing ten lines from the bottom thereof. Where-

fore, the defendant presents this its Bill 15, and prays that it be allowed.

N. A. STEDMAN,  
F. A. WILLIAMS,  
ANDREWS, BALL & STREETMAN,  
WILSON, DABNEY & KING,  
*Attorneys for Defendant.*

Approved:

T. B. GREENWOOD,  
*Atty. for Plffs.*

This Agreed Bill 15 was presented to me this 17th day of March, 1914, and is in all things approved and allowed.

A. E. DAVIS,  
*Judge Presiding.*

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### DEFENDANT'S BILL OF EXCEPTION NO. 16.

ANDERSON COUNTY ET AL.

vs.

I. & G. N. RAILWAY COMPANY. :

Filed Mar. 18, 1914.

BE IT REMEMBERED that upon the trial of this case, the witness Wright being upon the stand, the plaintiffs stated that they proposed to prove by him descriptions of properties, sites and acreage, etc., in Palestine, for the purpose of showing that their alleged contracts were performed, and to show ratification. Whereupon, the defendant objected that the matters proposed to be shown were subsequent to the transactions attempted to be proved, and therefore could have no tendency to prove it, and were immaterial and irrelevant. They opposed, also, the following objections, to wit: those set out in Bill of Exceptions No. 12, now referred to, and which has been allowed.

And these objections having been considered by the

court, were all by him overruled, and the defendant then excepted and took its Bill No. 16, and over these objections the plaintiffs testified as appears on page 163 of the Statement of Facts. Wherefore, the defendant presents this its Bill No. 16, and prays that it be allowed.

N. A. STEDMAN,  
F. A. WILLIAMS,  
ANDREWS, BALL & STREETMAN,  
WILSON, DABNEY & KING,  
*Attorneys for Defendant.*

Approved:

T. B. GREENWOOD,  
*Atty. for Plffs.*

This Agreed Bill 16 was presented to me this 17th day of March, A. D. 1914, and is in all things approved and allowed.

A. E. DAVIS,  
*Judge Presiding.*

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**DEFENDANT'S BILL OF EXCEPTION NO. 17.**

ANDERSON COUNTY ET AL.

vs.

I. & G. N. RAILWAY COMPANY.

Filed Mar. 18, 1914.

BE IT REMEMBERED that on the trial of this case, the witness Wright being upon the stand, the plaintiffs stated that they proposed to prove descriptions of the properties of the I. & G. N. Railroad Company at Palestine, their sites, acreage, etc., for the purpose of showing that their alleged contracts were performed, and to show ratification, and then proceeded to ask the witness Wright to describe such properties, and as they stand now, owned by the defendant. To which question and any answer thereto the defendant objected that the mat-

ters proposed to be shown were subsequent to the transaction intended to be proved, and were also immaterial and irrelevant, and they also opposed all of the objections set out in their Bill of Exceptions No. 12, which has been allowed by the court, and re-stated them to the court.

Which objections being considered, were by the court overruled, and the defendant took this its Bill of Exception No. 17, and over the objections, the witness testified as appears, commencing near the middle of page 163, and extending through the first paragraph on page 164 of the St. F. Wherefore, the defendant presents this its Bill of Exceptions No. 17, and prays that it be allowed.

N. A. STEDMAN,  
F. A. WILLIAMS,  
ANDREWS, BALL & STREETMAN,  
WILSON, DABNEY & KING,  
*Attorneys for Defendant.*

Approved:

T. B. GREENWOOD,  
*Atty. for Plffs.*

This Agreed Bill 17 was presented to me this 17th day of March, 1914, and is in all things approved and allowed.

A. E. DAVIS,  
*Judge Presiding.*

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### **BILL OF EXCEPTION NO. 18.**

ANDERSON COUNTY ET AL.

vs.

I. & G. N. RAILWAY COMPANY.

Filed Mar. 18, 1914.

BE IT REMEMBERED that on the trial of this case, the witness Wright being on the stand, testified that he knew H. M. Hoxie, Superintendent, he thought, of the



I. & G. N. Railroad Company, and that in 1875 he had a transaction with Hoxie relative to the general office of the I. & G. N. Railroad Company. He was then asked what took place at that transaction, state all of it and who were present, and what was done and said at that meeting, and to describe the meeting, and also what was done in pursuance of any agreement made thereafter. Whereupon, the defendant objected to the questions and any answers thereto, as follows:

(1) That it now developed, as shown by the contract with the County introduced by the plaintiffs that there was a complete and perfectly legal written contract between Anderson County, Texas, and the H. & G. N. R. R., required by law to be in writing, and which could only legally be formed in writing, which, as shown by the petition, it was proposed to modify, add to, change, or vary by parol testimony; and that such writing being complete in itself could not be so modified, changed, varied or added to. (2) That the testimony offered as to what Judge Reagan said and what Grow said and others said was hearsay. (3) That the testimony is offered, as appears by the pleadings and the statement now made by the plaintiffs, in support of a contract alleged to have been made in behalf of the citizens of Palestine acting by Judge Reagan, upon an illegal consideration, to wit: Judge Reagan's alleged undertaking to induce and influence the voters of the county to vote a bond issue, the alleged consideration to the railroad being solely the engagement of Judge Reagan to induce and advocate such a bond issue. (4) That the evidence is offered for the purpose of showing an agreement or an alleged contract, in promotion of a County contract, and to attach to the County contract, which is in writing, an alleged promotion contract, which, if made, would be upon an illegal consideration and is prohibited by law and public policy. (5) That after the lapse of over 40 years it is not permissible to prove, in connection with a written contract with the County and the public, what were the

inducements or considerations or representations outside of the written contract there were upon which it was made, nor can a written contract adopted by the voters be so modified. (6) That it appears from the pleadings, and tender of the testimony, that it is now proposed to show that Judge Reagan's services were hired to induce and influence the voters of Anderson County to vote a bond issue, on inducements outside of the writings, that the shops and general offices were to be erected in Palestine for the benefit of the people of Palestine, as contradistinguished from the people of the County, and that it would have been illegal to arrange to bestow such benefits upon the people of part of the county as contradistinguished from the people of all of the county. (7) That the proposed agreement, as plead and as proposed to be testified to in parol, if legal and provable under the law, which is denied, would have to be in writing, and comes within the terms of the statute of frauds, which is now invoked; and therefore it is not provable in parol. (8) That after the lapse of over 40 years and after rights had been acquired and acted upon by various parties, on the basis of the written contract and agreement already introduced, it is not permissible to prove by parol the alleged contract. (8a) That a record of the transaction with the County introduced by plaintiffs, showed the judgment of the County Court settling the whole matter and the considerations for the contract, adjudged to have been performed by the railroad, whereby the matter was *res adjudicata*, and the parties estopped. (9) That there is no evidence that Grow had any authority to make any agreement, such as is proposed to be shown by parol, because the law lodged the authority to make any such agreement, if it could be made at all, wholly with the board of directors, and, furthermore, that there is no evidence whatsoever of the ratification of such an agreement, which ratification could only be by the board of directors. (10) That the testimony would be immaterial and irrelevant. (11) It appears by the decree of

foreclosure of the sold out International & Great Northern Railroad Company in May, 1910, and introduced by the plaintiffs, that all of the issues involved in said proposed testimony were settled, and if not settled were reserved exclusively for the United States Court. (12) The plaintiffs rely upon the act of the Legislature of Texas of 1889, carried into articles 6423-4-5 of the present Revised Statutes of Texas, and are now claiming that by such act, long subsequent to the alleged contract which they plead in this case, a lien, burden, or servitude were fixed upon the property or properties, or some of them, of the sold out I. & G. N. R. R., which have been acquired by this defendant; without which lien or burden they can not recover; and in that by this statute and its terms they are extending and attempting to burden and add to the alleged contracts in its extensions and purported obligations, by going beyond the alleged contracts, whereby it appears, when applied to the facts of this case, that such act of 1889, as so construed, is unconstitutional and void and violates sub-section one of section X of article one of the Constitution of the United States, prohibiting any State from passing a law impairing the obligation of contracts. The plaintiffs claiming that their alleged personal contract so became secured first in 1889, and that in 1889 the statute placed other obligations on the alleged contracts, and not included in the contracts. (13) Because said act of the legislature of 1889 violates sub-section one of section X of article one of the Constitution of the United States and impairs the obligation of contracts when, and as construed by the plaintiffs and plead by them; without which construction and application they cannot recover; in that it appears, from the decree of foreclosure and evidence introduced by them, that the I. & G. N. R. R. was sold out under a mortgage termed the second mortgage, issued in 1881; that the defendant is the assignee and holder as purchaser of all the rights whatsoever accruing to the mortgagees; and further, as to any obligations, claimed by the plaintiffs to have been

imposed by the act of 1889 (all of which were additions to and burdens upon the alleged contract asserted by plaintiffs) they are, in violation of said mortgage, attempting to make prior in law rights which were junior in time, if any such rights existed, all of which is in violation of the Constitution of the United States, here and now invoked. (14) It appears that the plaintiffs rely upon said State act of 1889, as construed by them, which act is in violation, when so construed, of section one of article XIV of the Amendments to the Constitution of the United States, commonly called the XIV Amendment; in that such statute imposes great penalties; and in that the insistence that the statute is applicable to the defendant, constitutes an attempt to abridge the privileges and immunities of the defendant and to deprive it of its property without due process of law, and to deny it the equal protection of the law by penalizing or threatening to penalize it at the rate of \$5,000 a day, and further penalize it, if it should resort to the courts to resist this action and litigate its rights by refusing to obey such unconstitutional statute. (15) The plaintiffs can not recover, as admitted by them, without the aid of said State Statute of 1889, which statute, as applied by them, is void and unconstitutional and violates section one of article 14 of the Amendments to the Constitution of the United States; in that it is an undue interference with the business and obligations of the defendant, which it owes to the public in state and interstate commerce; whereby it attempts to interfere with the lawful discretion and power of the defendant to conduct its business within the limits of the law; and whereby it attempts, by subsequent statute, to place burdens and liens and additions on and securing personal contracts as claimed by the plaintiffs, thereby denying to this defendant the equal protection of the law and taking its property without due process of law by such illegal interference. (16) That the said act of 1889 of Texas, as applied, is unconstitutional and void, and yet without it the plaintiffs can not re-

cover; in that such act is applicable only to chartered railroads and not applicable to individuals, receivers or other persons operating as railroad carriers, or to other persons or corporations whatsoever, and so violates section one of article XIV of the Amendments to the Constitution of the United States, being legislation against a species or class, not rightly classified on any legal ground; and in that it places a burden upon the species or class not placed upon other persons and corporations classifiable with it; thereby violating the prohibition of denying to any persons "the equal protection of the laws," and abridging the privileges and immunities of the defendant and depriving it of its property without due process of law. (17) The plaintiffs rely upon the said act of 1889, which is claimed by them to secure their alleged contracts in this case, which as applied, is illegal and void and contrary to the Constitution of the State of Texas: (a) because the same assesses a penalty of an amount prohibited by the Constitution; (b) because the statute as construed and pleaded is retroactive; (c) because the plaintiffs seek to recover in violation of the obligations and terms of the alleged contracts on which they sue and in violation of the mortgage contract, of the sold out railroad, made in 1881; (d) because such statute is *ex post facto* and pronounces penalties, and therein is contrary to the Constitution of the United States, as well as that of the state; (e) because as construed by plaintiffs the statute denies to the defendant the equal protection of the law and is violative of the due process of law; (f) because such statute as construed by the plaintiffs, and without which construction they can not prevail, is an attempt to place on this defendant, never assuming the same, alleged obligations of the sold out I. & G. N. R. R. or its predecessors, and which were personal to them. (17a) Because the plaintiffs alleged and attempted to prove a contract binding "forever," the law and Constitution not permitting properties and obligations to be bound up or enforced "forever," and the alleged con-

tracts being as claimed forever, or indeterminate, are terminable at option, if contracts at all, which is not admitted. (18) Because the plaintiffs have introduced the conveyance of the properties of the sold out railroad to this defendant, and also its charter and the decree of foreclosure under which the properties were sold, from which it appears that the defendant bought free of all the obligations now asserted by the plaintiffs. (19) Because plaintiffs have introduced the charter of the defendant, from which it appears the general offices are located at Houston, Texas, and the charter being legally issued, the defendant is bound to maintain its general offices at Houston, Texas. (20) Because it also appears that the H. & G. N. R. R.'s charter, introduced by the plaintiffs, required said offices to be at Houston, Texas, and the charter of the International, introduced by plaintiffs, not designating a definite place for the offices, and the two roads consolidated under act of 1889, the offices are obligated to be kept at Houston, Texas.

And furthermore: (1) That the plaintiffs now state that Captain R. S. Hayes, then the General Manager or superior of Mr. Hoxie, of the I. & G. N. R. R., was proposed to be brought into the transaction; that this testimony, obviously, will relate to the "Rent-House" alleged contract set forth in plaintiffs' petition, wherein Captain Hayes is not mentioned, and that no transaction can be based upon him, it being plead that the transaction was made with Hoxie, not with Hayes. (2) That the bonds issued by the county had been already delivered, and it was a closed transaction, and that therefore there could be no consideration for this alleged "Rent-House" transaction; (3) that the alleged "Rent-House" transaction was a transaction which, if it constituted a contract, which is not admitted, was required by the statute of frauds to be in writing, and cannot, therefore, be proved in parol; (4) that, as alleged, no contract is stated; (5) that, as alleged, and within the

terms of the allegation, there was shown no consideration to the Railroad for any contract; (6) that, as alleged, the contract was indefinite as to time, if it was a contract, which is not admitted, and therefore was at the option of either party to discontinue the performance, and was not further enforceable; (7) that an alleged contract binding "forever" was plead, and that no such agreement, if made, could be a contract, as no such contract could be "forever." And all of the objections hereinabove stated were by the court overruled, and to the ruling of the court the defendant then excepted and took its Bill of Exceptions No. 18, and over such exceptions, the witness testified as set out, commencing on page 165 at the beginning of paragraph, eighth line from bottom, and extending to cross-examination of Wright on page 171 of the Statement of Facts. Wherefore, the defendant presents this its Bill 18, and prays that it be allowed.

F. A. WILLIAMS,  
N. A. STEDMAN,  
ANDREWS, BALL & STREETMAN,  
WILSON, DABNEY & KING,  
*Attorneys for Defendant.*

Approved:

T. B. GREENWOOD,  
*Atty. for Plffs.*

This Agreed Bill 18 was presented to me this 17th day of March, 1914, and is in all things approved and allowed.

A. E. DAVIS,  
*Judge Presiding.*

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**DEFENDANT'S BILL OF EXCEPTION NO. 18a.**  
ANDERSON COUNTY ET AL.

vs.

I. & G. N. RAILWAY COMPANY.

Filed Mar. 18, 1914.

BE IT REMEMBERED that on the trial of this case,



the witness Wright called by plaintiffs, stated that at the meeting with Hoxie in the early part of 1875, Hoxie told Ozment, present at that meeting, that he had received a letter from Grow, and was proceeding to testify as to what Hoxie stated was the contents of that letter, covering matter already included in Bill of Exception No. 18, but the defendant then also specially objected to his testifying to the contents of such letter, because his testimony would be hearsay, and because Hoxie's statement of what was in the letter was hearsay, and also because Grow was not then in the service of the company, and had severed his connection with the company, and because no accepted statement from him could bind the company, nor could any admissions made by him at that time, in 1875, he, at most, merely having been an agent; and that an agent's admissions were not, under these circumstances, admissible. These objections being made, plaintiffs' counsel stated that notice had been given to the defendant to produce the original of it, and defendant's counsel stated that search had been made, and that if there was ever such a letter, none could be found, the notice having been given about ten days before the trial.

Which objections were then overruled by the court, and the defendant excepted and took this its Bill 18-a, and over these objections, the witness testified that Hoxie stated to Ozment on this occasion that he had a letter from Galusha A. Grow, insisting on his (Hoxie) complying with the contract, which Grow stated in this letter he had made with Judge Reagan, whereby Grow said that he and Judge Reagan had agreed to locate the general offices at Palestine, as well as the shops and roundhouses, and that he wanted it to be done, as appears in Statement of Facts on page 166. Wherefore, the defendant pre-

sents this its Bill of Exceptions No. 18-a, and prays that it be allowed.

N. A. STEDMAN,  
F. A. WILLIAMS,  
ANDREWS, BALL & STREETMAN,  
WILSON, DABNEY & KING,  
*Attorneys for Defendant.*

Approved:

T. B. GREENWOOD,  
*Atty. for Plffs.*

This Agreed Bill 18-a was presented to me this 17th day of March, 1914, and is in all things approved and allowed.

A. E. DAVIS,  
*Judge Presiding.*

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### DEFENDANT'S BILL NO. 19.

ANDERSON COUNTY ET AL.

vs.

I. & G. N. RAILWAY COMPANY.

Filed Mar. 18, 1914.

BE IT REMEMBERED that upon the trial of this case, Mrs. John H. Reagan was called as a witness by the plaintiffs, and stated that she knew of a meeting at which she was personally present, between Judge Reagan and Galusha A. Grow, President of the H. & G. N. R. R., and which took place at Judge Reagan's residence in March, 1872, Grow being accompanied by Noble and Wright, who, with herself and Judge Reagan alone were present. She was then requested to state what took place at this conference, and what was said and done; whereupon the defendant objected as follows:

(1) That it now developed, as shown by the contract with the County introduced by the plaintiffs, that there

was a complete and perfectly legal written contract between Anderson County, Texas, and the H. & G. N. R. R., required by law to be in writing, and which could only legally be formed in writing, which, as shown by the petition, it was proposed to modify, add to, change, or vary by parol testimony; and that such writing being complete in itself could not be so modified, changed, varied or added to. (2) That the testimony offered as to what Judge Reagan said and what Grow said and others said was hearsay. (3) That the testimony is offered, as appears by the pleadings and the statement now made by the plaintiffs, in support of a contract alleged to have been made in behalf of the citizens of Palestine acting by Judge Reagan upon an illegal consideration, to wit: Judge Reagan's alleged undertaking to induce and influence the voters of the county to vote a bond issue, the alleged consideration to the railroad being solely the engagement of Judge Reagan to induce and advocate such a bond issue. (4) That the evidence is offered for the purpose of showing an agreement or an alleged contract, in promotion of a County contract, and to attach to the County contract, which is in writing, an alleged promotion contract, which, if made, would be upon an illegal consideration and is prohibited by law and public policy. (5) That after the lapse of over 40 years it is not permissible to prove, in connection with a written contract with the County and the public, what were the inducements or considerations or representations outside of the written contract there were upon which it was made, nor can a written contract adopted by the voters be so modified. (6) That it appears from the pleadings, and tender of the testimony, that it is now proposed to show that Judge Reagan's services were hired to induce and influence the voters of Anderson County to vote a bond issue, on inducements outside of the writings, that the shops and general offices were to be erected in Palestine for the benefit of the people of Palestine, as con-

tradistinguished from the people of the County, and that it would have been illegal to arrange to bestow such benefits upon the people of part of the county as contradistinguished from the people of all of the county. (7) That the proposed agreement, as plead and as proposed to be testified to in parol, if legal and provable under the law, which is denied, would have to be in writing, and comes within the terms of the statute of frauds, which is now invoked; and therefore it is not provable in parol. (8) That after the lapse of over 40 years and after rights had been acquired and acted upon by various parties, on the basis of the written contract and agreement already introduced, it is not permissible to prove by parol the alleged contract. (8a) That a record of the transaction with the County introduced by plaintiffs, showed the judgment of the County Court settling the whole matter and the consideration for the contract, adjudged to have been performed by the railroad, whereby the matter was *res adjudicata*, and the parties estopped. (9) That there is no evidence that Grow had any authority to make any agreement, such as is proposed to be shown by parol, because the law lodged the authority to make any such agreement, if it could be made at all, wholly with the board of directors, and, furthermore, that there is no evidence whatsoever of the ratification of such an agreement, which ratification could only be by the board of directors. (10) That the testimony would be immaterial and irrelevant. (11) It appears by the decree of foreclosure of the sold out International & Great Northern Railroad Company in May, 1910, and introduced by the plaintiffs, that all of the issues involved in said proposed testimony were settled, and if not settled, were reserved exclusively for the United States Court. (12) The plaintiffs rely upon the act of the Legislature of Texas of 1889, carried into articles 6423-4-5 of the present Revised Statutes of Texas, and are now claiming that by such act, long subsequent to the alleged contract which

they plead in this case, a lien, burden, or servitude were fixed upon the property or properties, or some of them, of the sold out I. & G. N. R. R., which have been acquired by this defendant; without which lien or burden they can not recover; and in that by this statute and its terms they are extending and attempting to burden and add to the alleged contracts in its extensions and purported obligations, by going beyond the alleged contracts, whereby it appears, when applied to the facts of this case, that such act of 1889, as so construed, is unconstitutional and void and violates sub-section one of section X of article one of the Constitution of the United States, prohibiting any State from passing a law impairing the obligation of contracts. The plaintiffs claiming that their alleged personal contract so became secured first in 1889, and that in 1889 the statute placed other obligations on the alleged contracts, and not included in the contracts.

(13) Because said act of the legislature of 1889 violates sub-section one of section X of article one of the Constitution of the United States and impairs the obligation of contracts when, and as construed by the plaintiffs and plead by them; without which construction and application they can not recover; in that it appears, from the decree of foreclosure and evidence introduced by them, that the I. & G. N. R. R. was sold out under a mortgage termed the second mortgage, issued in 1881; that the defendant is the assignee and holder as purchaser of all the rights whatsoever accruing to the mortgagees; and further, as to any obligations, claimed by the plaintiffs to have been imposed by the act of 1889 (all of which were additions to and burdens upon the alleged contract asserted by plaintiffs) they are, in violation of said mortgage, attempting to make prior in law rights which were junior in time, if any such rights existed, all of which is in violation of the Constitution of the United States, here and now invoked. (14) It appears that the plaintiffs rely upon said State act of 1889, as construed by them, which

act is in violation, when so construed, of section one of article XIV of the Amendments to the Constitution of the United States, commonly called the XIV Amendment; in that such statute imposes great penalties; and in that the insistence that the statute is applicable to the defendant, constitutes an attempt to abridge the privileges and immunities of the defendant and to deprive it of its property without due process of law, and to deny it the equal protection of the law by penalizing or threatening to penalize it at the rate of \$5000 a day, and further penalize it, if it should resort to the courts to resist this action and litigate its rights by refusing to obey such unconstitutional statute. (15) The plaintiffs can not recover, as admitted by them, without the aid of said State Statute of 1889, which statute, as applied by them, is void and unconstitutional and violates section one of article 14 of the Amendments to the Constitution of the United States; in that it is an undue interference with the business and obligations of the defendant, which it owes to the public in state and interstate commerce; whereby it attempts to interfere with the lawful discretion and power of the defendant to conduct its business within the limits of the law; and whereby it attempts, by subsequent statute, to place burdens and liens and additions on and securing personal contracts as claimed by the plaintiffs, thereby denying to this defendant the equal protection of the law and taking its property without due process of law by such illegal interference. (16) That the said act of 1889 of Texas, as applied, is unconstitutional and void, and yet without it the plaintiffs cannot recover; in that such act is applicable only to chartered railroads and not applicable to individuals, receivers or other persons operating as railroad carriers, or to other persons or corporations whatsoever, and so violates section one of article XIV of the Amendments to the Constitution of the United States, being legislation against a species or class, not rightly classified on any legal

ground; and in that it places a burden upon the species or class not placed upon other persons and corporations classifiable with it; thereby violating the prohibition of denying to any persons "the equal protection of the laws," and abridging the privileges and immunities of the defendant and depriving it of its property without due process of law. (17) The plaintiffs rely upon the said act of 1889, which is claimed by them to secure their alleged contracts in this case, which, as applied, is illegal and void and contrary to the Constitution of the State of Texas: (a) because the same assesses a penalty of an amount prohibited by the Constitution; (b) because the statute as construed and pleaded is retroactive; (c) because the plaintiffs seek to recover in violation of the obligations and terms of the alleged contracts on which they sue and in violation of the mortgage contract, of the sold out railroad, made in 1881; (d) because such statute is *ex post facto* and pronounces penalties, and therein is contrary to the Constitution of the United States, as well as that of the State; (e) because as construed by plaintiffs the statute denies to the defendant the equal protection of the law and is violative of the due process of law; (f) because such statute as construed by the plaintiffs, and without which construction they can not prevail, is an attempt to place on this defendant, never assuming the same, alleged obligations of the sold out I. & G. N. R. R. or its predecessors, and which were personal to them. (17a) Because the plaintiffs alleged and attempted to prove a contract binding "forever," the law and Constitution not permitting properties and obligations to be bound up or enforced "forever," and the alleged contracts being as claimed forever, or indeterminate, are terminable at option, if contracts at all, which is not admitted. (18) Because the plaintiffs have introduced the conveyance of the properties of the sold out railroad to this defendant, and also its charter and the decree of foreclosure under which the properties were sold, from



which it appears that the defendant bought free of all the obligations now asserted by the plaintiffs. (19) Because plaintiffs have introduced the charter of the defendant, from which it appears the general offices are located at Houston, Texas, and the charter being legally issued, the defendant is bound to maintain its general offices at Houston, Texas. (20) Because it also appears that the H. & G. N. R. R.'s charter, introduced by the plaintiffs, required said offices to be at Houston, Texas, and the charter of the International, introduced by plaintiffs, not designating a definite place for the offices, and the two roads consolidated under act of 1889, the offices are obligated to be kept at Houston, Texas.

And the court having considered these objections, overruled them all; whereupon, the defendant excepted, taking its Bill of Exceptions No. 19, and over these objections, the witness testified as set out on pages 208 and 209 of the Statement of Facts, commencing at the end of the 8th line on page 208, and continuing down to the end of her testimony, below the middle of page 209. Wherefore, the defendant presents this its Bill of Exceptions No. 19, and prays that it may be allowed.

N. A. STEDMAN,  
F. A. WILLIAMS,  
ANDREWS, BALL & STREETMAN,  
WILSON, DABNEY & KING,  
*Attorneys for Defendant.*

Approved:

T. B. GREENWOOD,  
*Atty. for Plffs.*

The foregoing Agreed Bill No. 19 of the defendant was this day presented to me, and is by me this 17th day of March, 1914, in all things approved and allowed.

A. E. DAVIS,  
*Judge Sitting in the Trial of This Case.*



**DEFENDANT'S BILL NO. 20.****ANDERSON COUNTY ET AL.****vs.****I. & G. N. RAILWAY COMPANY.**

Filed Mar. 18, 1914.

**BE IT REMEMBERED** that on the trial in this case, the witness Charles Jacobs was called by the plaintiffs, and testified that he heard Grow, President of the H. & G. N. R. R. Co. make a speech in the spring of 1872, in front of the Court House, and then he was asked to state what Grow said in that speech and its substance; whereupon, the defendant objected as follows:

(1) That it now developed, as shown by the contract with the County introduced by the plaintiffs, that there was a complete and perfectly legal written contract between Anderson County, Texas, and the H. & G. N. R. R., required by law to be in writing, and which could only legally be formed in writing, which, as shown by the petition, it was proposed to modify, add to, change, or vary by parol testimony; and that such writing being complete in itself could not be so modified, changed, varied or added to. (2) That the testimony offered as to what Judge Reagan said and what Grow said and others said was hearsay. (3) That the testimony is offered, as appears by the pleadings and the statement now made by the plaintiffs, in support of a contract alleged to have been made in behalf of the citizens of Palestine acting by Judge Reagan upon an illegal consideration, to wit: Judge Reagan's alleged undertaking to induce and influence the voters of the county to vote a bond issue, the alleged consideration to the railroad being solely the engagement of Judge Reagan to induce and advocate such a bond issue. (4) That the evidence is offered for the purpose of showing an agreement or an alleged contract, in promotion of a County contract, and to attach to the County contract, which is in writing, an alleged

promotion contract, which, if made, would be upon an illegal consideration and is prohibited by law and public policy. (5) That after the lapse of over 40 years it is not permissible to prove, in connection with a written contract with the County and the public, what were the inducements or considerations or representations outside of the written contract there were upon which it was made, nor can a written contract adopted by the voters be so modified. (6) That it appears from the pleadings, and tender of the testimony, that it is now proposed to show that Judge Reagan's services were hired to induce and influence the voters of Anderson County to vote a bond issue, on inducements outside of the writings, that the shops and general offices were to be erected in Palestine for the benefit of the people of Palestine, as contradistinguished from the people of the County, and that it would have been illegal to arrange to bestow such benefits upon the people of part of the county as contradistinguished from the people of all of the county. (7) That the proposed agreement, as plead and as proposed to be testified to in parol, if legal and provable under the law, which is denied, would have to be in writing, and comes within the terms of the statute of frauds, which is now invoked; and therefore it is not provable in parol. (8) That after the lapse of over 40 years and after rights had been acquired and acted upon by various parties, on the basis of the written contract and agreement already introduced, it is not permissible to prove by parol the alleged contract. (8a) That a record of the transaction with the County introduced by plaintiffs, showed the judgment of the County Court settling the whole matter, and the considerations for the contract, adjudged to have been performed by the railroad, whereby the matter was *res adjudicata*, and the parties estopped. (9) That there is no evidence that Grow had any authority to make any agreement, such as is proposed to be shown by parol, because the law lodged the authority to make

any such agreement, if it could be made at all, wholly with the board of directors, and, furthermore, that there is no evidence whatsoever of the ratification of such an agreement, which ratification could only be by the board of directors. (10) That the testimony would be immaterial and irrelevant. (11) It appears by the decree of foreclosure of the sold out International & Great Northern Railroad Company in May, 1910, and introduced by the plaintiffs, that all of the issues involved in said proposed testimony were settled, and if not settled were reserved exclusively for the United States Court. (12) The plaintiffs rely upon the act of the Legislature of Texas of 1889, carried into articles 6423-4-5 of the present Revised Statutes of Texas, and are now claiming that by such act, long subsequent to the alleged contract which they plead in this case, a lien, burden, or servitude were fixed upon the property or properties, or some of them, of the sold out I. & G. N. R. R., which have been acquired by this defendant; without which lien or burden they cannot recover; and in that by this statute and its terms they are extending and attempting to burden and add to the alleged contracts in its extensions and purported obligations, by going beyond the alleged contracts, whereby it appears, when applied to the facts of this case, that such act of 1889, as so construed, is unconstitutional and void and violates sub-section one of section X or article one of the Constitution of the United States, prohibiting any State from passing a law impairing the obligation of contracts. The plaintiffs claiming that their alleged personal contract so became secured first in 1889, and that in 1889 the statute placed other obligations on the alleged contracts, and not included in the contracts. (13) Because said act of the legislature of 1889 violates sub-section one of section X of article one of the Constitution of the United States and impairs the obligation of contracts when, and as construed by the plaintiffs and plead by them; without which construction and applica-

tion they cannot recover; in that it appears, from the decree of foreclosure and evidence introduced by them, that the I. & G. N. R. R. was sold out under a mortgage termed the second mortgage, issued in 1881; that the defendant is the assignee and holder as purchaser of all the rights whatsoever accruing to the mortgagees; and further, as to any obligations, claimed by the plaintiffs to have been imposed by the act of 1889 (all of which were additions to and burdens upon the alleged contract asserted by plaintiffs) they are, in violation of said mortgage, attempting to make prior in law rights which were junior in time, if any such rights existed, all of which is in violation of the Constitution of the United States, here and now invoked. (14) It appears that the plaintiffs rely upon said State act of 1889, as construed by them, which act is in violation, when so construed, of section one of article XIV of the Amendments to the Constitution of the United States, commonly called the XIV Amendment; in that such statute imposes great penalties; and in that the insistence that the statute is applicable to the defendant, constitutes an attempt to abridge the privileges and immunities of the defendant and to deprive it of its property without due process of law, and to deny it the equal protection of the law by penalizing or threatening to penalize it at the rate of \$5000 a day, and further penalize it, if it should resort to the courts to resist this action and litigate its rights by refusing to obey such unconstitutional statute. (15) The plaintiffs cannot recover, as admitted by them, without the aid of said State Statute of 1889, which statute, as applied by them, is void and unconstitutional and violates section one of article 14 of the Amendments to the Constitution of the United States; in that it is an undue interference with the business and obligations of the defendant, which it owes to the public in state and interstate commerce; whereby it attempts to interfere with the lawful discretion and power of the defendant to conduct its business

within the limits of the law; and whereby it attempts, by subsequent statute, to place burdens and liens and additions on and securing personal contracts as claimed by the plaintiffs, thereby denying to this defendant the equal protection of the law, and taking its property without due process of law by such illegal interference. (16) That the said act of 1889 of Texas, as applied, is unconstitutional and void, and yet without it the plaintiffs cannot recover; in that such act is applicable only to chartered railroads and not applicable to individuals, receivers or other persons operating as railroad carriers, or to other persons or corporations whatsoever, and so violates section one of article XIV of the Amendments to the Constitution of the United States, being legislation against a species or class, not rightly classified on any legal ground; and in that it places a burden upon the species or class not placed upon other persons and corporations classifiable with it; thereby violating the prohibition of denying to any persons "the equal protection of the laws," and abridging the privileges and immunities of the defendant and depriving it of its property without due process of law. (17) The plaintiffs rely upon the said act of 1889, which is claimed by them to secure their alleged contracts in this case, which as applied, is illegal and void and contrary to the Constitution of the State of Texas: (a) because the same assesses a penalty of an amount prohibited by the Constitution; (b) because the statute as construed and pleaded is retroactive; (c) because the plaintiffs seek to recover in violation of the obligations and terms of the alleged contracts on which they sue, and in violation of the mortgage contract, of the sold out railroad, made in 1881; (d) because such statute is *ex post facto* and pronounces penalties, and therein is contrary to the Constitution of the United States, as well as that of the State; (e) because as construed by plaintiffs the statute denies to the defendant the equal protection of the law and is violative of the due process of law;



(f) because such statute as construed by the plaintiffs, and without which construction they cannot prevail, is an attempt to place on this defendant, never assuming the same, alleged obligations of the sold out I. G. N. R. R. or its predecessors, and which were personal to them. (17a) Because the plaintiffs alleged and attempted to prove a contract binding "forever," the law and Constitution not permitting properties and obligations to be bound up or enforced "forever," and the alleged contracts being as claimed forever, or indeterminate, are terminable at option, if contracts at all, which is not admitted. (18) Because the plaintiffs have introduced the conveyance of the properties of the sold out railroad to this defendant, and also its charter and the decree of foreclosure under which the properties were sold, from which it appears that the defendant bought free of all the obligations now asserted by the plaintiffs. (19) Because plaintiffs have introduced the charter of the defendant, from which it appears the general offices are located at Houston, Texas, and the charter being legally issued, the defendant is bound to maintain its general offices at Houston, Texas. (20) Because it also appears that the H. & G. N. R. R.'s charter, introduced by the plaintiffs, required said offices to be at Houston, Texas, and the charter of the International, introduced by plaintiffs, not designating a definite place for the offices, and the two roads consolidated under act of 1889, the offices are obligated to be kept at Houston, Texas.

And these objections were considered by the court, and then by him overruled; whereupon, the defendant excepted and took its Bill No. 20, and over the defendant's objections, the witness testified as set out on page 212 of the Statement of Facts, beginning at the end of the 11th line from the top of the page, and continuing to the point on that page where his cross-examination commenced.

Wherefore, the defendant presents this its Bill of Exception No. 20, and prays that it be allowed.

N. A. STEDMAN,  
F. A. WILLIAMS,  
ANDREWS, BALL & STREETMAN,  
WILSON, DABNEY & KING,  
*Attorneys for Defendant.*

Approved:

T. B. GREENWOOD,  
*Atty. for Plffs.*

The foregoing Agreed Bill No. 20 of the defendant was this day presented to me, and is by me this 17th day of March, 1914, in all things approved and allowed.

A. E. DAVIS,  
*Judge Sitting in the Trial of This Case.*

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#### DEFENDANT'S BILL NO. 21.

ANDERSON COUNTY ET AL.

vs.

I. & G. N. RAILWAY COMPANY.

Filed Mar. 18, 1914.

BE IT REMEMBERED that upon the trial of the above case, P. H. Hughes, one of the plaintiffs, was called by them, and testified that he heard a speech made by Grow prior to the bond election of the County in 1872, the speech being made at the court house in Palestine. The witness was then requested to state what Grow said in that speech, to which the defendant objected as follows:

(1) That it now developed, as shown by the contract with the County introduced by the plaintiffs that there was a complete and perfectly legal written contract between Anderson County, Texas, and the H. & G. N. R. R., required by law to be in writing, and which could only

legally be formed in writing, which, as shown by the petition, it was proposed to modify, add to, change, or vary by parol testimony; and that such writing being complete in itself could not be so modified, changed, varied or added to. (2) That the testimony offered as to what Judge Reagan said and what Grow said and others said was hearsay. (3) That the testimony is offered, as appears by the pleadings and the statement now made by the plaintiffs, in support of a contract alleged to have been made in behalf of the citizens of Palestine acting by Judge Reagan, upon an illegal consideration, to wit: Judge Reagan's alleged undertaking to induce and influence the voters of the county to vote a bond issue, the alleged consideration to the railroad being solely the engagement of Judge Reagan to induce and advocate such a bond issue. (4) That the evidence is offered for the purpose of showing an agreement or an alleged contract, in promotion of a County contract, and to attach to the County contract, which is in writing, an alleged promotion contract, which, if made, would be upon an illegal consideration and is prohibited by law and public policy. (5) That after the lapse of over 40 years it is not permissible to prove, in connection with a written contract with the County and the public, what were the inducements or considerations or representations outside of the written contract there were upon which it was made, nor can a written contract adopted by the voters be so modified. (6) That it appears from the pleadings, and tender of the testimony, that it is now proposed to show that Judge Reagan's services were hired to induce and influence the voters of Anderson County to vote a bond issue, on inducements outside of the writings, that the shops and general offices were to be erected in Palestine for the benefit of the people of Palestine, as contradistinguished from the people of the County, and that it would have been illegal to arrange to bestow such benefits upon the people of part of the county as contradistinguished from the people of all of the county. (7) That

the proposed agreement, as plead and as proposed to be testified to in parol, if legal and provable under the law, which is denied, would have to be in writing, and comes within the terms of the statute of frauds, which is now invoked; and therefore it is not provable in parol. (8) That after the lapse of over 40 years and after rights had been acquired and acted upon by various parties, on the basis of the written contract and agreement already introduced, it is not permissible to prove by parol the alleged contract. (8a) That a record of the transaction with the County introduced by plaintiffs, showed the judgment of the County Court settling the whole matter and the considerations for the contract, adjudged to have been performed by the railroad, whereby the matter was *res adjudicata*, and the parties estopped. (9) That there is no evidence that Grow had any authority to make any agreement, such as is proposed to be shown by parol, because the law lodged the authority to make any such agreement, if it could be made at all, wholly with the board of directors, and, furthermore, that there is no evidence whatsoever of the ratification of such an agreement, which ratification could only be by the board of directors. (10) That the testimony would be immaterial and irrelevant. (11) It appears by the decree of foreclosure of the sold out International & Great Northern Railroad Company in May, 1910, and introduced by the plaintiffs, that all of the issues involved in said proposed testimony were settled, and if not settled were reserved exclusively for the United States Court. (12) The plaintiffs rely upon the act of the Legislature of Texas of 1889, carried into articles 6423-4-5 of the present Revised Statutes of Texas, and are now claiming that by such act, long subsequent to the alleged contract which they plead in this case, a lien, burden, or servitude were fixed upon the property or properties, or some of them, of the sold out I. & G. N. R. R., which have been acquired by this defendant; without which lien or burden they can not recover; and in that by this statute and its

terms they are extending and attempting to burden and add to the alleged contracts in its extensions and purported obligations, by going beyond the alleged contracts, whereby it appears, when applied to the facts of this case, that such act of 1889, as so construed, is unconstitutional and void and violates sub-section one of section X of article one of the Constitution of the United States, prohibiting any State from passing a law impairing the obligation of contracts. The plaintiffs claiming that their alleged personal contract so became secured first in 1889, and that in 1889 the statute placed other obligations on the alleged contracts, and not included in the contracts. (13) Because said act of the legislature of 1889 violates sub-section one of section X of article one of the Constitution of the United States and impairs the obligation of contracts when, and as construed by the plaintiffs and plead by them; without which construction and application they cannot recover; in that it appears, from the decree of foreclosure and evidence introduced by them, that the I. & G. N. R. R. was sold out under a mortgage termed the second mortgage, issued in 1881; that the defendant is the assignee and holder as purchaser of all the rights whatsoever accruing to the mortgagees; and further, as to any obligations, claimed by the plaintiffs to have been imposed by the act of 1889 (all of which were additions to and burdens upon the alleged contract asserted by plaintiffs) they are, in violation of said mortgage, attempting to make prior in law rights which were junior in time, if any such rights existed, all of which is in violation of the Constitution of the United States, here and now invoked. (14) It appears that the plaintiffs rely upon said State act of 1889, as construed by them, which act is in violation, when so construed, of section one of article XIV of the Amendments to the Constitution of the United States, commonly called the XIV Amendment; in that such statute imposes great penalties; and in that the insistence that the statute is applicable to the defendant, constitutes an attempt to abridge the privileges

and immunities of the defendant and to deprive it of its property without due process of law, and to deny it the equal protection of the law by penalizing or threatening to penalize it at the rate of \$5,000 a day, and further penalize it, if it should resort to the courts to resist this action and litigate its rights by refusing to obey such unconstitutional statute. (15) The plaintiffs can not recover, as admitted by them, without the aid of said State Statute of 1889, which statute, as applied by them, is void and unconstitutional and violates section one of article 14 of the Amendments to the Constitution of the United States; in that it is an undue interference with the business and obligations of the defendant, which it owes to the public in state and interstate commerce; whereby it attempts to interfere with the lawful discretion and power of the defendant to conduct its business within the limits of the law; and whereby it attempts, by subsequent statute, to place burdens and liens and additions on and securing personal contracts as claimed by the plaintiffs, thereby denying to this defendant the equal protection of the law and taking its property without due process of law by such illegal interference. (16) That the said act of 1889 of Texas, as applied, is unconstitutional and void, and yet without it the plaintiffs can not recover; in that such act is applicable only to chartered railroads and not applicable to individuals, receivers or other persons operating as railroad carriers, or to other persons or corporations whatsoever, and so violates section one of article XIV of the Amendments to the Constitution of the United States, being legislation against a species or class, not rightly classified on any legal ground; and in that it places a burden upon the species or class not placed upon other persons and corporations classifiable with it; thereby violating the prohibition of denying to any persons "the equal protection of the laws," and abridging the privileges and immunities of the defendant and depriving it of its property without due process of law. (17) The plaintiffs rely upon the

said act of 1889, which is claimed by them to secure their alleged contracts in this case, which as applied, is illegal and void and contrary to the Constitution of the State of Texas: (a) because the same assesses a penalty of an amount prohibited by the Constitution; (b) because the statute as construed and pleaded is retroactive; (c) because the plaintiffs seek to recover in violation of the obligations and terms of the alleged contracts on which they sue and in violation of the mortgage contract, of the sold out railroad, made in 1881; (d) because such statute is *ex post facto* and pronounces penalties, and therein is contrary to the Constitution of the United States, as well as that of the state; (e) because as construed by plaintiffs the statute denies to the defendant the equal protection of the law and is violative of the due process of law; (f) because such statute as construed by the plaintiffs, and without which construction they can not prevail, is an attempt to place on this defendant, never assuming the same, alleged obligations of the sold out I. & G. N. R. R. or its predecessors, and which were personal to them. (17a) Because the plaintiffs alleged and attempted to prove a contract binding "forever," the law and Constitution not permitting properties and obligations to be bound up or enforced "forever," and the alleged contracts being as claimed forever, or indeterminate, are terminable at option, if contracts at all, which is not admitted. (18) Because the plaintiffs have introduced the conveyance of the properties of the sold out railroad to this defendant, and also its charter and the decree of foreclosure under which the properties were sold, from which it appears that the defendant bought free of all the obligations now asserted by the plaintiffs. (19) Because plaintiffs have introduced the charter of the defendant, from which it appears the general offices are located at Houston, Texas, and the charter being legally issued, the defendant is bound to maintain its general offices at Houston, Texas. (20) Because it also appears that the H. & G. N. R. R.'s charter, introduced by the



plaintiffs, required said offices to be at Houston, Texas, and the charter of the International, introduced by plaintiffs, not designating a definite place for the offices, and the two roads consolidated under act of 1889, the offices are obligated to be kept at Houston, Texas.

Which objections being considered by the court, were by the court overruled, and the defendant took its Bill No. 21, and the witness, over the objections, testified as set out in the Statement of Facts, commencing with the last line of page 210, and continuing on page 211 to the end of his testimony, two lines from the bottom of the page. Wherefore, the defendant presents this its Bill of Exceptions No. 21, and prays that it be allowed.

N. A. STEDMAN,

F. A. WILLIAMS,

ANDREWS, BALL & STREETMAN,

WILSON, DABNEY & KING,

*Attorneys for Defendant.*

Approved:

T. B. GREENWOOD,

*Atty. for Plffs.*

The foregoing Agreed Bill No. 21 of the defendant was this day presented to me, and is by me this 17th day of March, 1914, in all things approved and allowed.

A. E. DAVIS,

*Judge Sitting in the Trial of This Case.*

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### DEFENDANT'S BILL NO. 22.

ANDERSON COUNTY ET AL.

vs.

I. & G. N. RAILWAY COMPANY.

Filed Mar. 18, 1914.

BE IT REMEMBERED that on the trial of this case, the witness John F. Watts was called by the plaintiffs, and testified that he was present at the public meeting

at the Court House at which Galusha A. Grow made an address, and that Judge Reagan introduced Grow, this address being made at, or just before, the election in 1872, held to vote on a bond issue to the H. & G. N. R. R. The witness was then requested to state what Judge Reagan said, and what Grow said on that occasion; whereupon, the defendant objected to the question and any answer thereto, as follows:

(1) That it now developed, as shown by the contract with the County introduced by the plaintiffs, that there was a complete and perfectly legal written contract between Anderson County, Texas, and the H. & G. N. R. R., required by law to be in writing, and which could only legally be formed in writing, which, as shown by the petition, it was proposed to modify, add to, change, or vary by parol testimony; and that such writing being complete in itself could not be so modified, changed, varied or added to. (2) That the testimony offered as to what Judge Reagan said and what Grow said and others said was hearsay. (3) That the testimony is offered, as appears by the pleadings and the statement now made by the plaintiffs, in support of a contract alleged to have been made in behalf of the citizens of Palestine acting by Judge Reagan upon an illegal consideration, to wit: Judge Reagan's alleged undertaking to induce and influence the voters of the county to vote a bond issue, the alleged consideration to the railroad being solely the engagement of Judge Reagan to induce and advocate such a bond issue. (4) That the evidence is offered for the purpose of showing an agreement or an alleged contract, in promotion of a County contract, and to attach to the County contract, which is in writing, an alleged promotion contract, which, if made, would be upon an illegal consideration and is prohibited by law and public policy. (5) That after the lapse of over 40 years it is not permissible to prove, in connection with a written contract with the County and the public, what were the

inducements or considerations or representations outside of the written contract there were upon which it was made, nor can a written contract adopted by the voters be so modified. (6) That it appears from the pleadings, and tender of the testimony, that it is now proposed to show that Judge Reagan's services were hired to induce and influence the voters of Anderson County to vote a bond issue, on inducements outside of the writings, that the shops and general offices were to be erected in Palestine for the benefit of the people of Palestine, as contradistinguished from the people of the County, and that it would have been illegal to arrange to bestow such benefits upon the people of part of the county as contradistinguished from the people of all of the county. (7) That the proposed agreement, as plead and as proposed to be testified to in parol, if legal and provable under the law, which is denied, would have to be in writing, and comes within the terms of the statute of frauds, which is now invoked; and therefore it is not provable in parol. (8) That after the lapse of over 40 years and after rights had been acquired and acted upon by various parties, on the basis of the written contract and agreement already introduced, it is not permissible to prove by parol the alleged contract. (8a) That a record of the transaction with the County introduced by plaintiffs, showed the judgment of the County Court settling the whole matter and the consideration for the contract, adjudged to have been performed by the railroad, whereby the matter was *res adjudicata*, and the parties estopped. (9) That there is no evidence that Grow had any authority to make any agreement, such as is proposed to be shown by parol, because the law lodged the authority to make any such agreement, if it could be made at all, wholly with the board of directors, and, furthermore, that there is no evidence whatsoever of the ratification of such an agreement, which ratification could only be by the board of directors. (10) That the testimony would be imma-

terial and irrelevant. (11) It appears by the decree of foreclosure of the sold out International & Great Northern Railroad Company in May, 1910, and introduced by the plaintiffs, that all of the issues involved in said proposed testimony were settled, and if not settled, were reserved exclusively for the United States Court. (12) The plaintiffs rely upon the act of the Legislature of Texas of 1889, carried into articles 6423-4-5 of the present Revised Statutes of Texas, and are now claiming that by such act, long subsequent to the alleged contract which they plead in this case, a lien, burden, or servitude were fixed upon the property or properties, or some of them, of the sold out I. & G. N. R. R., which have been acquired by this defendant; without which lien or burden they can not recover; and in that by this statute and its terms they are extending and attempting to burden and add to the alleged contracts in its extensions and purported obligations, by going beyond the alleged contracts, whereby it appears, when applied to the facts of this case, that such act of 1889, as so construed, is unconstitutional and void and violates sub-section one of section X of article one of the Constitution of the United States, prohibiting any State from passing a law impairing the obligation of contracts. The plaintiffs claiming that their alleged personal contract so became secured first in 1889, and that in 1889 the statute placed other obligations on the alleged contracts, and not included in the contracts. (13) Because said act of the legislature of 1889 violates sub-section one of section X of article one of the Constitution of the United States and impairs the obligation of contracts when, and as construed by the plaintiffs and plead by them; without which construction and application they can not recover; in that it appears, from the decree of foreclosure and evidence introduced by them, that the I. & G. N. R. R. was sold out under a mortgage termed the second mortgage, issued in 1881; that the defendant is the assignee and holder as purchaser of all the rights

whatsoever accruing to the mortgagees; and further, as to any obligations, claimed by the plaintiffs to have been imposed by the act of 1889 (all of which were additions to and burdens upon the alleged contract asserted by plaintiffs) they are, in violation of said mortgage, attempting to make prior in law rights which were junior in time, if any such rights existed, all of which is in violation of the Constitution of the United States, here and now invoked. (14) It appears that the plaintiffs rely upon said State act of 1889, as construed by them, which act is in violation, when so construed, of section one of article XIV of the Amendments to the Constitution of the United States, commonly called the XIV Amendment; in that such statute imposes great penalties; and in that the insistence that the statute is applicable to the defendant, constitutes an attempt to abridge the privileges and immunities of the defendant and to deprive it of its property without due process of law, and to deny it the equal protection of the law by penalizing or threatening to penalize it at the rate of \$5000 a day, and further penalize it, if it should resort to the courts to resist this action and litigate its rights by refusing to obey such unconstitutional statute. (15) The plaintiffs can not recover, as admitted by them, without the aid of said State Statute of 1889, which statute, as applied by them, is void and unconstitutional and violates section one of article 14 of the Amendments to the Constitution of the United States; in that it is an undue interference with the business and obligations of the defendant, which it owes to the public in state and interstate commerce; whereby it attempts to interfere with the lawful discretion and power of the defendant to conduct its business within the limits of the law; and whereby it attempts, by subsequent statute, to place burdens and liens and additions on and securing personal contracts as claimed by the plaintiffs, thereby denying to this defendant the equal protection of the law and taking its property without due

process of law by such illegal interference. (16) That the said act of 1889 of Texas, as applied, is unconstitutional and void, and yet without it the plaintiffs cannot recover; in that such act is applicable only to chartered railroads and not applicable to individuals, receivers or other persons operating as railroad carriers, or to other persons or corporations whatsoever, and so violates section one of article XIV of the Amendments to the Constitution of the United States, being legislation against a species or class, not rightly classified on any legal ground; and in that it places a burden upon the species or class not placed upon other persons and corporations classifiable with it; thereby violating the prohibition of denying to any persons "the equal protection of the laws," and abridging the privileges and immunities of the defendant and depriving it of its property without due process of law. (17) The plaintiffs rely upon the said act of 1889, which is claimed by them to secure their alleged contracts in this case, which, as applied, is illegal and void and contrary to the Constitution of the State of Texas: (a) because the same assesses a penalty of an amount prohibited by the Constitution; (b) because the statute as construed and pleaded is retroactive; (c) because the plaintiffs seek to recover in violation of the obligations and terms of the alleged contracts on which they sue and in violation of the mortgage contract, of the sold out railroad, made in 1881; (d) because such statute is *ex post facto* and pronounces penalties, and therein is contrary to the Constitution of the United States, as well as that of the State; (e) because as construed by plaintiffs the statute denies to the defendant the equal protection of the law and is violative of the due process of law; (f) because such statute as construed by the plaintiffs, and without which construction they can not prevail, is an attempt to place on this defendant, never assuming the same, alleged obligations of the sold out I. & G. N. R. R. or its predecessors, and which were personal to them. (17a) Because the plaintiffs alleged and attempted to

prove a contract binding "forever," the law and Constitution not permitting properties and obligations to be bound up or enforced "forever," and the alleged contracts being as claimed forever, or indeterminate, are terminable at option, if contracts at all, which is not admitted. (18) Because the plaintiffs have introduced the conveyance of the properties of the sold out railroad to this defendant, and also its charter and the decree of foreclosure under which the properties were sold, from which it appears that the defendant bought free of all the obligations now asserted by the plaintiffs. (19) Because plaintiffs have introduced the charter of the defendant, from which it appears the general offices are located at Houston, Texas, and the charter being legally issued, the defendant is bound to maintain its general offices at Houston, Texas. (20) Because it also appears that the H. & G. N. R. R.'s charter, introduced by the plaintiffs, required said offices to be at Houston, Texas, and the charter of the International, introduced by plaintiffs, not designating a definite place for the offices, and the two roads consolidated under act of 1889, the offices are obligated to be kept at Houston, Texas.

And these objections being considered, were by the court all overruled. Whereupon, the defendant excepted to the ruling of the court, and took its Bill No. 22, and over the objections, Watts testified as is shown on page 210 of the Statement of Facts, commencing at the end of the 5th line from the top of the page, and continuing to the end of his testimony on that page. Wherefore, the defendant presents this its Bill No. 22, and prays that it be allowed.

F. A. WILLIAMS,  
N. A. STEDMAN,  
ANDREWS, BALL & STREETMAN,  
WILSON, DABNEY & KING,

*Attorneys for Defendant.*

Approved:

T. B. GREENWOOD,  
*Atty. for Plffs.*



The foregoing Agreed Bill No. 22 of the defendant was this day presented to me, and is by me this 17th day of March, 1914, in all things approved and allowed.

A. E. DAVIS,  
*Judge Sitting in the Trial of this Case.*

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**DEFENDANT'S BILL NO. 23.**

ANDERSON COUNTY ET AL.

vs.

I. & G. N. RAILWAY COMPANY.

Filed Mar. 18, 1914.

BE IT REMEMBERED that upon the trial of the above case, the witness Robert McClure was called by the plaintiffs, and testified that he heard Grow, President of the H. & G. N. R. R., make a speech at Palestine, one or two or three days before the County Bond Election in 1872. He was then asked to state what Grow said in that speech; whereupon, the defendant objected as follows:

(1) That it now developed, as shown by the contract with the County introduced by the plaintiffs, that there was a complete and perfectly legal written contract between Anderson County, Texas, and the H. & G. N. R. R., required by law to be in writing, and which could only legally be formed in writing, which, as shown by the petition, it was proposed to modify, add to, change, or vary by parol testimony; and that such writing being complete in itself could not be so modified, changed, varied or added to. (2) That the testimony offered as to what Judge Reagan said and what Grow said and others said was hearsay. (3) That the testimony is offered, as appears by the pleadings and the statement now made by the plaintiffs, in support of a contract alleged to have been made in behalf of the citizens of Palestine acting

by Judge Reagan upon an illegal consideration, to wit: Judge Reagan's alleged undertaking to induce and influence the voters of the county to vote a bond issue, the alleged consideration to the railroad being solely the engagement of Judge Reagan to induce and advocate such a bond issue. (4) That the evidence is offered for the purpose of showing an agreement or an alleged contract, in promotion of a County contract, and to attach to the County contract, which is in writing, an alleged promotion contract, which, if made, would be upon an illegal consideration and is prohibited by law and public policy. (5) That after the lapse of over 40 years it is not permissible to prove, in connection with a written contract with the County and the public, what were the inducements or considerations or representations outside of the written contract there were upon which it was made, nor can a written contract adopted by the voters be so modified. (6) That it appears from the pleadings, and tender of the testimony, that it is now proposed to show that Judge Reagan's services were hired to induce and influence the voters of Anderson County to vote a bond issue, on inducements outside of the writings, that the shops and general offices were to be erected in Palestine for the benefit of the people of Palestine, as contradistinguished from the people of the County, and that it would have been illegal to arrange to bestow such benefits upon the people of part of the county as contradistinguished from the people of all of the county. (7) That the proposed agreement, as plead and as proposed to be testified to in parol, if legal and provable under the law, which is denied, would have to be in writing, and comes within the terms of the statute of frauds, which is now invoked; and therefore it is not provable in parol. (8) That after the lapse of over 40 years and after rights had been acquired and acted upon by various parties, on the basis of the written contract and agreement already introduced, it is not permissible to prove by parol

the alleged contract. (8a) That a record of the transaction with the County introduced by plaintiffs, showed the judgment of the County Court settling the whole matter, and the considerations for the contract, adjudged to have been performed by the railroad, whereby the matter was *res adjudicata*, and the parties estopped. (9) That there is no evidence that Grow had any authority to make any agreement, such as is proposed to be shown by parol, because the law lodged the authority to make any such agreement, if it could be made at all, wholly with the board of directors, and, furthermore, that there is no evidence whatsoever of the ratification of such an agreement, which ratification could only be by the board of directors. (10) That the testimony would be immaterial and irrelevant. (11) It appears by the decree of foreclosure of the sold out International & Great Northern Railroad Company in May, 1910, and introduced by the plaintiffs, that all of the issues involved in said proposed testimony were settled, and if not settled were reserved exclusively for the United States Court. (12) The plaintiffs rely upon the act of the Legislature of Texas of 1889, carried into articles 6423-4-5 of the present Revised Statutes of Texas, and are now claiming that by such act, long subsequent to the alleged contract which they plead in this case, a lien, burden, or servitude were fixed upon the property or properties, or some of them, of the sold out I. & G. N. R. R., which have been acquired by this defendant; without which lien or burden they cannot recover; and in that by this statute and its terms they are extending and attempting to burden and add to the alleged contracts in its extensions and purported obligations, by going beyond the alleged contracts, whereby it appears, when applied to the facts of this case, that such act of 1889, as so construed, is unconstitutional and void and violates sub-section one of section X or article one of the Constitution of the United States, prohibiting any State from passing a law impairing the ob-

ligation of contracts. The plaintiffs claiming that their alleged personal contract so became secured first in 1889, and that in 1889 the statute placed other obligations on the alleged contracts, and not included in the contracts. (13) Because said act of the legislature of 1889 violates sub-section one of section X of article one of the Constitution of the United States and impairs the obligation of contracts when, and as construed by the plaintiffs and plead by them; without which construction and application they cannot recover; in that it appears, from the decree of foreclosure and evidence introduced by them, that the I. & G. N. R. R. was sold out under a mortgage termed the second mortgage, issued in 1881; that the defendant is the assignee and holder as purchaser of all the rights whatsoever accruing to the mortgagees; and further, as to any obligations, claimed by the plaintiffs to have been imposed by the act of 1889 (all of which were additions to and burdens upon the alleged contract asserted by plaintiffs) they are, in violation of said mortgage, attempting to make prior in law rights which were junior in time, if any such rights existed, all of which is in violation of the Constitution of the United States, here and now invoked. (14) It appears that the plaintiffs rely upon said State act of 1889, as construed by them, which act is in violation, when so construed, of section one of article XIV of the Amendments to the Constitution of the United States, commonly called the XIV Amendment; in that such statute imposes great penalties; and in that the insistence that the statute is applicable to the defendant, constitutes an attempt to abridge the privileges and immunities of the defendant and to deprive it of its property without due process of law, and to deny it the equal protection of the law by penalizing or threatening to penalize it at the rate of \$5000 a day, and further penalize it, if it should resort to the courts to resist this action and litigate its rights by refusing to obey such unconstitutional statute. (15) The plaintiffs cannot

recover, as admitted by them, without the aid of said State Statute of 1889, which statute, as applied by them, is void and unconstitutional and violates section one of article 14 of the Amendments to the Constitution of the United States; in that it is an undue interference with the business and obligations of the defendant, which it owes to the public in state and interstate commerce; whereby it attempts to interfere with the lawful discretion and power of the defendant to conduct its business within the limits of the law; and whereby it attempts, by subsequent statute, to place burdens and liens and additions on and securing personal contracts as claimed by the plaintiffs, thereby denying to this defendant the equal protection of the law, and taking its property without due process of law by such illegal interference. (16) That the said act of 1889 of Texas, as applied, is unconstitutional and void, and yet without it the plaintiffs cannot recover; in that such act is applicable only to chartered railroads and not applicable to individuals, receivers or other persons operating as railroad carriers, or to other persons or corporations whatsoever, and so violates section one of article XIV of the Amendments to the Constitution of the United States, being legislation against a species or class, not rightly classified on any legal ground; and in that it places a burden upon the species or class not placed upon other persons and corporations classifiable with it; thereby violating the prohibition of denying to any persons "the equal protection of the laws," and abridging the privileges and immunities of the defendant and depriving it of its property without due process of law. (17) The plaintiffs rely upon the said act of 1889, which is claimed by them to secure their alleged contracts in this case, which as applied, is illegal and void and contrary to the Constitution of the State of Texas: (a) because the same assesses a penalty of an amount prohibited by the Constitution; (b) because the statute as construed and pleaded is retroactive; (c) be-

cause the plaintiffs seek to recover in violation of the obligations and terms of the alleged contracts on which they sue, and in violation of the mortgage contract, of the sold out railroad, made in 1881; (d) because such statute is *ex post facto* and pronounces penalties, and therein is contrary to the Constitution of the United States, as well as that of the State; (e) because as construed by plaintiffs the statute denies to the defendant the equal protection of the law and is violative of the due process of law; (f) because such statute as construed by the plaintiffs, and without which construction they cannot prevail, is an attempt to place on this defendant, never assuming the same, alleged obligations of the sold out I. G. N. R. R. or its predecessors, and which were personal to them. (17a) Because the plaintiffs alleged and attempted to prove a contract binding "forever," the law and Constitution not permitting properties and obligations to be bound up or enforced "forever," and the alleged contracts being as claimed forever, or indeterminate, are terminable at option, if contracts at all, which is not admitted. (18) Because the plaintiffs have introduced the conveyance of the properties of the sold out railroad to this defendant, and also its charter and the decree of foreclosure under which the properties were sold, from which it appears that the defendant bought free of all the obligations now asserted by the plaintiffs. (19) Because plaintiffs have introduced the charter of the defendant, from which it appears the general offices are located at Houston, Texas, and the charter being legally issued, the defendant is bound to maintain its general offices at Houston, Texas. (20) Because it also appears that the H. & G. N. R. R.'s charter, introduced by the plaintiffs, required said offices to be at Houston, Texas, and the charter of the International, introduced by plaintiffs, not designating a definite place for the offices, and the two roads consolidated under act of 1889, the offices are obligated to be kept at Houston, Texas.

Which objections being considered by the court, were by him overruled, and the defendant then excepted, and took this its Bill No. 23, and over these objections, the witness testified as set out in the Statement of Facts, commencing in the middle of the 9th line from the bottom on page 213, and extending to the end of his testimony on page 214. Wherefore, the defendant presents this its Bill of Exceptions 23, and prays that it be allowed.

F. A. WILLIAMS,  
N. A. STEDMAN,  
ANDREWS, BALL & STREETMAN,  
WILSON, DABNEY & KING,  
*Attorneys for Defendant.*

Approved:

T. B. GREENWOOD,  
*Atty. for Plffs.*

The foregoing Agreed Bill No. 23 of the defendant was this day presented to me, and is by me this 17th day of March, 1914, in all things approved and allowed.

A. E. DAVIS,  
*Judge Sitting in the Trial of This Case.*

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#### DEFENDANT'S BILL NO. 24.

ANDERSON COUNTY ET AL.

vs.

I. & G. N. RAILWAY COMPANY.

Filed Mar. 18, 1914.

BE IT REMEMBERED that upon the trial of the above case, J. W. Ozment was called by the plaintiffs, and testified that Grow, the President of the H. & G. N., made a speech at Palestine in 1872, a few days before the election for the Bond Issue, and that Judge Reagan introduced Grow, and that he was present and heard these speeches.



The witness was then asked to state what Judge Reagan said and what Grow said in their respective speeches, to which the defendant objected as follows:

(1) That it now developed, as shown by the contract with the County introduced by the plaintiffs that there was a complete and perfectly legal written contract between Anderson County, Texas, and the H. & G. N. R. R., required by law to be in writing, and which could only legally be formed in writing, which, as shown by the petition, it was proposed to modify, add to, change, or vary by parol testimony; and that such writing being complete in itself could not be so modified, changed, varied or added to. (2) That the testimony offered as to what Judge Reagan said and what Grow said and others said was hearsay. (3) That the testimony is offered, as appears by the pleadings and the statement now made by the plaintiffs, in support of a contract alleged to have been made in behalf of the citizens of Palestine acting by Judge Reagan, upon an illegal consideration, to wit: Judge Reagan's alleged undertaking to induce and influence the voters of the county to vote a bond issue, the alleged consideration to the railroad being solely the engagement of Judge Reagan to induce and advocate such a bond issue. (4) That the evidence is offered for the purpose of showing an agreement or an alleged contract, in promotion of a County contract, and to attach to the County contract, which is in writing, an alleged promotion contract, which, if made, would be upon an illegal consideration and is prohibited by law and public policy. (5) That after the lapse of over 40 years it is not permissible to prove, in connection with a written contract with the County and the public, what were the inducements or considerations or representations outside of the written contract there were upon which it was made, nor can a written contract adopted by the voters be so modified. (6) That it appears from the pleadings, and tender of the testimony, that it is now proposed to show that Judge Reagan's services were hired to induce

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and influence the voters of Anderson County to vote a bond issue, on inducements outside of the writings, that the shops and general offices were to be erected in Palestine for the benefit of the people of Palestine, as contradistinguished from the people of the County, and that it would have been illegal to arrange to bestow such benefits upon the people of part of the county as contradistinguished from the people of all of the county. (7) That the proposed agreement, as plead and as proposed to be testified to in parol, if legal and provable under the law, which is denied, would have to be in writing, and comes within the terms of the statute of frauds, which is now invoked; and therefore it is not provable in parol. (8) That after the lapse of over 40 years and after rights had been acquired and acted upon by various parties, on the basis of the written contract and agreement already introduced, it is not permissible to prove by parol the alleged contract. (8a) That a record of the transaction with the County introduced by plaintiffs, showed the judgment of the County Court settling the whole matter and the considerations for the contract, adjudged to have been performed by the railroad, whereby the matter was *res adjudicata*, and the parties estopped. (9) That there is no evidence that Grow had any authority to make any agreement, such as is proposed to be shown by parol, because the law lodged the authority to make any such agreement, if it could be made at all, wholly with the board of directors, and, furthermore, that there is no evidence whatsoever of the ratification of such an agreement, which ratification could only be by the board of directors. (10) That the testimony would be immaterial and irrelevant. (11) It appears by the decree of foreclosure of the sold out International & Great Northern Railroad Company in May, 1910, and introduced by the plaintiffs, that all of the issues involved in said proposed testimony were settled, and if not settled were reserved exclusively for the United States Court. (12) The plaintiffs rely upon the act of the Legislature of Texas

of 1889, carried into articles 6423-4-5 of the present Revised Statutes of Texas, and are now claiming that by such act, long subsequent to the alleged contract which they plead in this case, a lien, burden, or servitude were fixed upon the property or properties, or some of them, of the sold out I. & G. N. R. R., which have been acquired by this defendant; without which lien or burden they can not recover; and in that by this statute and its terms they are extending and attempting to burden and add to the alleged contracts in its extensions and purported obligations, by going beyond the alleged contracts, whereby it appears, when applied to the facts of this case, that such act of 1889, as so construed, is unconstitutional and void and violates sub-section one of section X of article one of the Constitution of the United States, prohibiting any State from passing a law impairing the obligation of contracts. The plaintiffs claiming that their alleged personal contract so became secured first in 1889, and that in 1889 the statute placed other obligations on the alleged contracts, and not included in the contracts.

(13) Because said act of the legislature of 1889 violates sub-section one of section X of article one of the Constitution of the United States and impairs the obligation of contracts when, and as construed by the plaintiffs and plead by them; without which construction and application they cannot recover; in that it appears, from the decree of foreclosure and evidence introduced by them, that the I. & G. N. R. R. was sold out under a mortgage termed the second mortgage, issued in 1881; that the defendant is the assignee and holder as purchaser of all the rights whatsoever accruing to the mortgagees; and further, as to any obligations, claimed by the plaintiffs to have been imposed by the act of 1889 (all of which were additions to and burdens upon the alleged contract asserted by plaintiffs) they are, in violation of said mortgage, attempting to make prior in law rights which were junior in time, if any such rights existed, all of which is in violation of the Constitution of the United States, here and

now invoked. (14) It appears that the plaintiffs rely upon said State act of 1889, as construed by them, which act is in violation, when so construed, of section one of article XIV of the Amendments to the Constitution of the United States, commonly called the XIV Amendment; in that such statute imposes great penalties; and in that the insistence that the statute is applicable to the defendant, constitutes an attempt to abridge the privileges and immunities of the defendant and to deprive it of its property without due process of law, and to deny it the equal protection of the law by penalizing or threatening to penalize it at the rate of \$5,000 a day, and further penalize it, if it should resort to the courts to resist this action and litigate its rights by refusing to obey such unconstitutional statute. (15) The plaintiffs can not recover, as admitted by them, without the aid of said State Statute of 1889, which statute, as applied by them, is void and unconstitutional and violates section one of article 14 of the Amendments to the Constitution of the United States; in that it is an undue interference with the business and obligations of the defendant, which it owes to the public in state and interstate commerce; whereby it attempts to interfere with the lawful discretion and power of the defendant to conduct its business within the limits of the law; and whereby it attempts, by subsequent statute, to place burdens and liens and additions on and securing personal contracts as claimed by the plaintiffs, thereby denying to this defendant the equal protection of the law and taking its property without due process of law by such illegal interference. (16) That the said act of 1889 of Texas, as applied, is unconstitutional and void, and yet without it the plaintiffs can not recover; in that such act is applicable only to chartered railroads and not applicable to individuals, receivers or other persons operating as railroad carriers, or to other persons or corporations whatsoever, and so violates section one of article XIV of the Amendments to the Constitution of the United States, being legislation against

a species or class, not rightly classified on any legal ground; and in that it places a burden upon the species or class not placed upon other persons and corporations classifiable with it; thereby violating the prohibition of denying to any persons "the equal protection of the laws," and abridging the privileges and immunities of the defendant and depriving it of its property without due process of law. (17) The plaintiffs rely upon the said act of 1889, which is claimed by them to secure their alleged contracts in this case, which as applied, is illegal and void and contrary to the Constitution of the State of Texas: (a) because the same assesses a penalty of an amount prohibited by the Constitution; (b) because the statute as construed and pleaded is retroactive; (c) because the plaintiffs seek to recover in violation of the obligations and terms of the alleged contracts on which they sue and in violation of the mortgage contract, of the sold out railroad, made in 1881; (d) because such statute is *ex post facto* and pronounces penalties, and therein is contrary to the Constitution of the United States, as well as that of the state; (e) because as construed by plaintiffs the statute denies to the defendant the equal protection of the law and is violative of the due process of law; (f) because such statute as construed by the plaintiffs, and without which construction they can not prevail, is an attempt to place on this defendant, never assuming the same, alleged obligations of the sold out I. & G. N. R. R. or its predecessors, and which were personal to them. (17a) Because the plaintiffs alleged and attempted to prove a contract binding "forever," the law and Constitution not permitting properties and obligations to be bound up or enforced "forever," and the alleged contracts being as claimed forever, or indeterminate, are terminable at option, if contracts at all, which is not admitted. (18) Because the plaintiffs have introduced the conveyance of the properties of the sold out railroad to this defendant, and also its charter and the decree of foreclosure under which the properties were sold, from

which it appears that the defendant bought free of all the obligations now asserted by the plaintiffs. (19) Because plaintiffs have introduced the charter of the defendant, from which it appears the general offices are located at Houston, Texas, and the charter being legally issued, the defendant is bound to maintain its general offices at Houston, Texas. (20) Because it also appears that the H. & G. N. R. R.'s charter, introduced by the plaintiffs, required said offices to be at Houston, Texas, and the charter of the International, introduced by plaintiffs, not designating a definite place for the offices, and the two roads consolidated under act of 1889, the offices are obligated to be kept at Houston, Texas.

Which objections being considered by the court, were by him overruled, to which action the defendant then excepted, and took this its Bill 24, and over these objections, the witness testified as set out in the Statement of Facts, commencing on page 225, near the end of the 14th line from the top, and continuing to the paragraph on page 226, commencing "Mr. Ozment said." Wherefore, the defendant presents this its Bill of Exceptions No. 24, and prays that it be allowed.

N. A. STEDMAN,  
F. A. WILLIAMS,  
ANDREWS, BALL & STREETMAN,  
WILSON, DABNEY & KING,  
*Attorneys for Defendant.*

Approved:

T. B. GREENWOOD,  
*Atty. for Plffs.*

The foregoing Agreed Bill No. 24 of the defendant was this day presented to me, and is by me this 17th day of March, 1914, in all things approved and allowed.

A. E. DAVIS,  
*Judge Sitting in the Trial of This Case.*

**DEFENDANT'S BILL NO. 25.****ANDERSON COUNTY ET AL.**

vs.

**I. & G. N. RAILWAY COMPANY.**

Filed Mar. 18, 1914.

BE IT REMEMBERED that upon the trial of this case, the witness Ozment was testifying, called by plaintiffs, and said that he knew H. M. Hoxie, and that in 1875 he met Hoxie with Wright and other citizens at the Magnolia Street crossing in Palestine, and went aboard Hoxie's private car. He was then asked to state what took place, and what conversations were held in the car with Hoxie, and what agreement, if any, was then made, and what was done, if anything, in pursuance of such agreement, to which questions and any answers in response thereto the defendant objected as follows:

(1) That it now developed, as shown by the contract with the County introduced by the plaintiffs, that there was a complete and perfectly legal written contract between Anderson County, Texas, and the H. & G. N. R. R., required by law to be in writing, and which could only legally be formed in writing, which, as shown by the petition, it was proposed to modify, add to, change, or vary by parol testimony; and that such writing being complete in itself could not be so modified, changed, varied or added to. (2) That the testimony offered as to what Judge Reagan said and what Grow said and others said was hearsay. (3) That the testimony is offered, as appears by the pleadings and the statement now made by the plaintiffs, in support of a contract alleged to have been made in behalf of the citizens of Palestine acting by Judge Reagan upon an illegal consideration, to wit: Judge Reagan's alleged undertaking to induce and influence the voters of the county to vote a bond issue, the alleged consideration to the railroad being solely the engagement of Judge Reagan to induce and advocate



such a bond issue. (4) That the evidence is offered for the purpose of showing an agreement or an alleged contract, in promotion of a County contract, and to attach to the County contract, which is in writing, an alleged promotion contract, which, if made, would be upon an illegal consideration and is prohibited by law and public policy. (5) That after the lapse of over 40 years it is not permissible to prove, in connection with a written contract with the County and the public, what were the inducements or considerations or representations outside of the written contract there were upon which it was made, nor can a written contract adopted by the voters be so modified. (6) That it appears from the pleadings, and tender of the testimony, that it is now proposed to show that Judge Reagan's services were hired to induce and influence the voters of Anderson County to vote a bond issue, on inducements outside of the writings, that the shops and general offices were to be erected in Palestine for the benefit of the people of Palestine, as contradistinguished from the people of the County, and that it would have been illegal to arrange to bestow such benefits upon the people of part of the county as contradistinguished from the people of all of the county. (7) That the proposed agreement, as plead and as proposed to be testified to in parol, if legal and provable under the law, which is denied, would have to be in writing, and comes within the terms of the statute of frauds, which is now invoked; and therefore it is not provable in parol. (8) That after the lapse of over 40 years and after rights had been acquired and acted upon by various parties, on the basis of the written contract and agreement already introduced, it is not permissible to prove by parol the alleged contract. (8a) That a record of the transaction with the County introduced by plaintiffs, showed the judgment of the County Court settling the whole matter and the consideration for the contract, adjudged to have been performed by the railroad, whereby the

matter was *res adjudicata*, and the parties estopped. (9) That there is no evidence that Grow had any authority to make any agreement, such as is proposed to be shown by parol, because the law lodged the authority to make any such agreement, if it could be made at all, wholly with the board of directors, and, furthermore, that there is no evidence whatsoever of the ratification of such an agreement, which ratification could only be by the board of directors. (10) That the testimony would be immaterial and irrelevant. (11) It appears by the decree of foreclosure of the sold out International & Great Northern Railroad Company in May, 1910, and introduced by the plaintiffs, that all of the issues involved in said proposed testimony were settled, and if not settled, were reserved exclusively for the United States Court. (12) The plaintiffs rely upon the act of the Legislature of Texas of 1889, carried into articles 6423-4-5 of the present Revised Statutes of Texas, and are now claiming that by such act, long subsequent to the alleged contract which they plead in this case, a lien, burden, or servitude were fixed upon the property or properties, or some of them, of the sold out I. & G. N. R. R., which have been acquired by this defendant; without which lien or burden they can not recover; and in that by this statute and its terms they are extending and attempting to burden and add to the alleged contracts in its extensions and purported obligations, by going beyond the alleged contracts, whereby it appears, when applied to the facts of this case, that such act of 1889, as so construed, is unconstitutional and void and violates sub-section one of section X of article one of the Constitution of the United States, prohibiting any State from passing a law impairing the obligation of contracts. The plaintiffs claiming that their alleged personal contract so became secured first in 1889, and that in 1889 the statute placed other obligations on the alleged contracts, and not included in the contracts. (13) Because said act of the legislature of 1889 violates

sub-section one of section X of article one of the Constitution of the United States and impairs the obligation of contracts when, and as construed by the plaintiffs and plead by them; without which construction and application they can not recover; in that it appears, from the decree of foreclosure and evidence introduced by them, that the I. & G. N. R. R. was sold out under a mortgage termed the second mortgage, issued in 1881; that the defendant is the assignee and holder as purchaser of all the rights whatsoever accruing to the mortgagees; and further, as to any obligations, claimed by the plaintiffs to have been imposed by the act of 1889 (all of which were additions to and burdens upon the alleged contract asserted by plaintiffs) they are, in violation of said mortgage, attempting to make prior in law rights which were junior in time, if any such rights existed, all of which is in violation of the Constitution of the United States, here and now invoked. (14) It appears that the plaintiffs rely upon said State act of 1889, as construed by them, which act is in violation, when so construed, of section one of article XIV of the Amendments to the Constitution of the United States, commonly called the XIV Amendment; in that such statute imposes great penalties; and in that the insistence that the statute is applicable to the defendant, constitutes an attempt to abridge the privileges and immunities of the defendant and to deprive it of its property without due process of law, and to deny it the equal protection of the law by penalizing or threatening to penalize it at the rate of \$5000 a day, and further penalize it, if it should resort to the courts to resist this action and litigate its rights by refusing to obey such unconstitutional statute. (15) The plaintiffs can not recover, as admitted by them, without the aid of said State Statute of 1889, which statute, as applied by them, is void and unconstitutional and violates section one of article 14 of the Amendments to the Constitution of the United States; in that it is an undue interference with

the business and obligations of the defendant, which it owes to the public in state and interstate commerce; whereby it attempts to interfere with the lawful discretion and power of the defendant to conduct its business within the limits of the law; and whereby it attempts, by subsequent statute, to place burdens and liens and additions on and securing personal contracts as claimed by the plaintiffs, thereby denying to this defendant the equal protection of the law and taking its property without due process of law by such illegal interference. (16) That the said act of 1889 of Texas, as applied, is unconstitutional and void, and yet without it the plaintiffs cannot recover; in that such act is applicable only to chartered railroads and not applicable to individuals, receivers or other persons operating as railroad carriers, or to other persons or corporations whatsoever, and so violates section one of article XIV of the Amendments to the Constitution of the United States, being legislation against a species or class, not rightly classified on any legal ground; and in that it places a burden upon the species or class not placed upon other persons and corporations classifiable with it; thereby violating the prohibition of denying to any persons "the equal protection of the laws," and abridging the privileges and immunities of the defendant and depriving it of its property without due process of law. (17) The plaintiffs rely upon the said act of 1889, which is claimed by them to secure their alleged contracts in this case, which, as applied, is illegal and void and contrary to the Constitution of the State of Texas: (a) because the same assesses a penalty of an amount prohibited by the Constitution; (b) because the statute as construed and pleaded is retroactive; (c) because the plaintiffs seek to recover in violation of the obligations and terms of the alleged contracts on which they sue and in violation of the mortgage contract, of the sold out railroad, made in 1881; (d) because such statute is *ex post facto* and pronounces penalties, and therein is

contrary to the Constitution of the United States, as well as that of the State; (e) because as construed by plaintiffs the statute denies to the defendant the equal protection of the law and is violative of the due process of law; (f) because such statute as construed by the plaintiffs, and without which construction they can not prevail, is an attempt to place on this defendant, never assuming the same, alleged obligations of the sold out I. & G. N. R. R. or its predecessors, and which were personal to them. (17a) Because the plaintiffs alleged and attempted to prove a contract binding "forever," the law and Constitution not permitting properties and obligations to be bound up or enforced "forever," and the alleged contracts being as claimed forever, or indeterminate, are terminable at option, if contracts at all, which is not admitted. (18) Because the plaintiffs have introduced the conveyance of the properties of the sold out railroad to this defendant, and also its charter and the decree of foreclosure under which the properties were sold, from which it appears that the defendant bought free of all the obligations now asserted by the plaintiffs. (19) Because plaintiffs have introduced the charter of the defendant, from which it appears the general offices are located at Houston, Texas, and the charter being legally issued, the defendant is bound to maintain its general offices at Houston, Texas. (20) Because it also appears that the H. & G. N. R. R.'s charter, introduced by the plaintiffs, required said offices to be at Houston, Texas, and the charter of the International, introduced by plaintiffs, not designating a definite place for the offices, and the two roads consolidated under act of 1889, the offices are obligated to be kept at Houston, Texas.

And furthermore, the defendant objected: (1) That the plaintiffs now state that Captain R. S. Hayes, then the General Manager or superior of Mr. Hoxie, of the I. & G. N. R. R., was proposed to be brought into the transaction; that this testimony, obviously, will relate to the

"Rent-House" alleged contract set forth in plaintiff's petition, wherein Captain Hayes is not mentioned, and that no transaction can be based upon him, it being plead that the transaction was made with Hoxie, not with Hayes; (2) that the bonds issued by the county had been already delivered, and it was a closed transaction, and that, therefore, there could be no consideration for this alleged "Rent-House" transaction; (3) that the alleged "Rent-House" transaction was a transaction which, if it constituted a contract, which is not admitted, was required by the statute of frauds to be in writing, and cannot, therefore, be proved in parol; (4) that, as alleged, no contract is stated; (5) that, as alleged, and within the terms of the allegation, there was shown no consideration to the Railroad for any contract; (6) that, as alleged, the contract was indefinite as to time, if it was a contract, which is not admitted, and therefore was, at the option of either party to discontinue the performance, and was not further enforceable; (7) that an alleged contract binding "forever" was plead, and that no such agreement, if made, could be a contract, as no such contract could be "forever."

All which objections hereinabove stated being considered by the court, were overruled, to which action of the court the defendant excepted, and took its Bill No. 25, and over these objections, the witness testified as set out in the Statement of Facts, commencing near the end of line 9 from the top of page 227, and continuing to his cross-examination, near the bottom of page 228. Wherefore, the defendant presents this its Bill No. 25, and prays that it be allowed.

F. A. WILLIAMS,  
N. A. STEDMAN,  
ANDREWS, BALL & STREETMAN,  
WILSON, DABNEY & KING,

Approved: *Attorneys for Defendant.*

T. B. GREENWOOD,  
*Atty. for Plffs.*

The foregoing Agreed Bill No. 25 of the defendant was this day presented to me, and is by me this 17th day of March, 1914, in all things approved and allowed.

A. E. DAVIS,

*Judge Sitting in the Trial of This Case.*

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**DEFENDANT'S BILL NO. 27.**

ANDERSON COUNTY ET AL.

vs.

I. & G. N. RAILWAY COMPANY.

Filed Mar. 18, 1914.

BE IT REMEMBERED that on the trial of this case, N. A. Stedman, one of the counsel for the defendant, was placed upon the witness stand by the plaintiff, and asked whether or not Trice, General Manager of the I. & G. N. Railroad Company, in 1898, requested his opinion upon the subject of the right of the Company to remove the General Offices from Palestine to some other point, and whether or not he examined into the County Records only in this regard, and advised Trice that he saw no impediment to the removal of the General Office, and whether or not on the 16th day of May, 1899, he read in one of the newspapers in general circulation in Palestine a letter from Judge John H. Reagan, now exhibited to the witness, and set out in Bill of Exceptions 28 hereinafter and in the record, and whether or not, having read this newspaper article, he called it to the attention of Mr. Trice and other officers of the Railroad, and why he called it to their attention. Which questions having been asked, the defendant objected thereto, first, that Judge Stedman, at these times, in 1898 and 1899, was the General Attorney and Counsel of the Railroad, and therefore, any communication about the matters asked about between himself and the officers of the Railroad, and advice



thereon, would be confidential and privileged communications of the highest order. Second, the whole matter was immaterial and irrelevant. Third, that the whole matter was confusing and immaterial as to any question of notice, and as to the newspaper article, the same objections as herein in this Bill above stated, were made, and further, that it was inquired into in support of a matter or transaction alleged to have been conducted by Judge Reagan himself, in which he was the principal party, and therefore, could not be in explanation of letters which he wrote way back in 1872 and 1874; that the newspaper article contained self-serving declarations. Fourth, that after such a great lapse of time, the newspaper article could not become a part of the transaction. Fifth, that the newspaper article showed that it was merely a political article, written many years after the transaction, and, therefore, inadmissible, and no inquiry about the same was admissible. Sixth, because the newspaper article (not now offered in evidence, but exhibited to the witness) states conclusions, and not facts, and is prejudicial in its character. Seventh, because the newspaper article was hearsay, and immaterial and irrelevant to any issue. The newspaper article was not now offered, but was offered next hereafter, as appears from Bill 28, but was intended to be offered when Judge Stedman was being questioned, and the objections above made were made without waiver of the right to object on these and other grounds to the newspaper article, and when it should be offered, and these objections being considered by the court, were by him all overruled, and the defendant excepted to this ruling, and took its Bill No. 27, and over these objections the witness was required to answer, and did answer, as follows:

That he thought that in the year 1898 Trice requested his opinion on the subject of whether or not the Company had a right to remove the General Offices from Palestine, and then that he made a very exhaustive investigation

of the County Records of Anderson County, and that all that he found were the matters between the H. & G. N. Railroad Company and Anderson County, with reference to the bond issue already introduced in evidence, and that he requested Howard, Custodian of the Records of the International Railroad Company and the H. & G. N., and Secretary of the I. & G. N. Railroad Company, to make a particular and exhaustive search among the records of his office with the view of discovering anything that the witness did not find on the County Records, and that his recollection is that the only matters found by Howard in the County Records was a duplicate of the same things on record in the County Records; that, on the 16th of May, 1899, he was still the General Attorney for the I. & G. N. Railroad Company, acting as such in the General Offices at Palestine, and that Mr. Trice was then Second Vice-President and General Manager of the I. & G. N. Railroad Company, and its highest Executive Officer in Texas at that time, and that Mr. Howard was then its Secretary, and a member of its Board of Directors, and Mr. Maury, then its Auditor, but he is not sure whether Maury was then a Director, and that Mr. G. L. Noble was then Assistant General Manager, and the witness was a Director; that he read the newspaper article written by Judge Reagan and published in two Palestine newspapers in general circulation, and exhibited to him, published on the 16th of May, 1889; that after reading it his impression now is that he mentioned it to Mr. Trice, but it is barely possible that Trice mentioned it to him, and that he feels sure he discussed it with Trice, and that it is his impression that he mentioned it to Howard, who was then a Director, and his impression is that he mentioned it to Maury, then the Auditor, and also to Noble, then Assistant General Manager, but that he would not say positively that he mentioned the article to these gentlemen first, for it is barely possible that they first mentioned it to him, but he is sure that they talked

about the article, and he thought that he did acquaint Trice, Howard and Maury with the substance of the article, and that he is sure they were acquainted with it in some way, and that after reading it he filed it away with other documents pertaining to the Railroad's business in the safe in his office, where it remained for several years, he having been General Attorney until 1906, and General Solicitor until 1908, and further, he thought that it was probably correct that his advice, whatever it may have been, had been given to Trice, and had been concluded some time before he read this newspaper publication; that he called the attention of these gentlemen to this newspaper article because it related to a subject so connected with the Railroad that he thought they were interested. Before being called to the stand, Judge Stedman had stated, the jury being out, but otherwise in open court, to Judge and Counsel, that he did not regard the communications between himself and others with regard to the newspaper article as privileged, but defendant, by leading counsel, did not concede this. He also testified that all the General Officers in charge of the Railroad in 1898 and 1899 resided in Palestine, except that the President and one Vice-President resided in New York.

On cross-examination by defendant, and after he had testified as above, over the objections of the defendant, the witness stated that his impression now is, without a perfect recollection about the matter, that he told Mr. Trice that he did not regard the newspaper article as stating a contract, with respect to the General Offices, Machine Shops and Round Houses; and that if he did, he did not think it would be admitted in evidence in view of the written records he had discovered in the Court House at Palestine. He stated this in answer to a question asking him whether or not he had given this advice as a lawyer, and the plaintiffs objected to this question being asked, but were overruled by the court. And the witness having answered this way on cross-examination,

the defendant moved the court, upon all the objections stated above, and the additional objection that his testimony now definitely showed that he was acting in his official connection with the Railroad at the time, to strike out all of Judge Stedman's evidence on direct examination, which motion was overruled by the court, and the defendant excepted. Wherefore, the defendant now presents this its Bill of Exceptions No. 27, and prays that it be allowed.

N. A. STEDMAN,  
F. A. WILLIAMS,  
ANDREWS, BALL & STREETMAN,  
WILSON, DABNEY & KING,  
*Attorneys for Defendant.*

Approved:

T. B. GREENWOOD,  
*Atty. for Plffs.*

This Agreed Bill was this 17th day of March, 1914, presented to me, and having been approved by the plaintiffs and found correct by me, is in all things allowed.

A. E. DAVIS,  
*Judge.*

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### DEFENDANT'S BILL NO. 28.

ANDERSON COUNTY ET AL.

vs.

I. & G. N. RAILWAY COMPANY.

Filed Mar. 18, 1914.

BE IT REMEMBERED that on the trial of this case, the witness N. A. Stedman, of the counsel for the defendant, being called by the plaintiffs, was asked by them whether or not on about the 16th of May, 1899, he read in one of the newspapers in general circulation in Palestine a letter from Judge John H. Reagan, and the wit-

ness stated that he had read the letter and acquainted Trice, the General Manager, Howard the Secretary, and Maury, and perhaps Noble, the Assistant General Manager, with the newspaper article, or called it to their attention, or had it called to their attention. It was admitted by the defendant that the article was authentic and written by Judge Reagan. The witness, Stedman, also stated that the article was published in two newspapers in Palestine about May 16th, 1899, both in general circulation there. Whereupon, the plaintiffs offered this newspaper article in evidence; to the introduction of which the defendant objected as follows:

(1) That it now developed, as shown by the contract with the County introduced by the plaintiffs, that there was a complete and perfectly legal written contract between Anderson County, Texas, and the H. & G. N. R. R., required by law to be in writing, and which could only legally be formed in writing, which, as shown by the petition, it was proposed to modify, add to, change, or vary by parol testimony; and that such writing being complete in itself could not be so modified, changed, varied or or added to. (2) That the article offered as to what Judge Reagan said and what Grow said and others said was hearsay. (3) That the article is offered, as appears by the pleadings and the statement now made by the plaintiffs, in support of a contract alleged to have been made in behalf of the citizens of Palestine acting by Judge Reagan upon an illegal consideration, to wit: Judge Reagan's alleged undertaking to induce and influence the voters of the county to vote a bond issue, the alleged consideration to the railroad being solely the engagement of Judge Reagan to induce and advocate such a bond issue. (4) That the evidence is offered for the purpose of showing an agreement or an alleged contract, in promotion of a County contract, and to attach to the County contract, which is in writing, an alleged promotion contract, which, if made, would be upon an

illegal consideration and is prohibited by law and public policy. (5) That after the lapse of over 40 years it is not permissible to prove, in connection with a written contract with the County and the public, what were the inducements or considerations or representations outside of the written contract there were upon which it was made, nor can a written contract adopted by the voters be so modified. (6) That it appears from the pleadings, and tender of the testimony, that it is now proposed to show that Judge Reagan's services were hired to induce and influence the voters of Anderson County to vote a bond issue, on inducements outside of the writings, that the shops and general offices were to be erected in Palestine for the benefit of the people of Palestine, as contradistinguished from the people of the County, and that it would have been illegal to arrange to bestow such benefits upon the people of part of the county as contradistinguished from the people of all of the county. (7) That the proposed agreement, as plead and as proposed to be testified to in parol, if legal and provable under the law, which is denied, would have to be in writing, and comes within the terms of the statute of frauds, which is now invoked; and therefore it is not provable in parol. (8) That after the lapse of over 40 years and after rights had been acquired and acted upon by various parties, on the basis of the written contract and agreement already introduced, it is not permissible to prove by parol the alleged contract. (8a) That a record of the transaction with the County introduced by plaintiffs, showed the judgment of the County Court settling the whole matter, and the considerations for the contract, adjudged to have been performed by the railroad, whereby the matter was *res adjudicata*, and the parties estopped. (9) That there is no evidence that Grow had any authority to make any agreement, such as is proposed to be shown by parol, because the law lodged the authority to make any such agreement, if it could be made at all, wholly

with the board of directors, and, furthermore, that there is no evidence whatsoever of the ratification of such an agreement, which ratification could only be by the board of directors. (10) That the testimony would be immaterial and irrelevant. (11) It appears by the decree of foreclosure of the sold out International & Great Northern Railroad Company in May, 1910, and introduced by the plaintiffs, that all of the issues involved in said proposed testimony were settled, and if not settled were reserved exclusively for the United States Court. (12) The plaintiffs rely upon the act of the Legislature of Texas of 1889, carried into articles 6423-4-5 of the present Revised Statutes of Texas, and are now claiming that by such act, long subsequent to the alleged contract which they plead in this case, a lien, burden, or servitude were fixed upon the property or properties, or some of them, of the sold out I. & G. N. R. R., which have been acquired by this defendant; without which lien or burden they cannot recover; and in that by this statute and its terms they are extending and attempting to burden and add to the alleged contracts in its extensions and purported obligations, by going beyond the alleged contracts, whereby it appears, when applied to the facts of this case, that such act of 1889, as so construed, is unconstitutional and void and violates sub-section one of section X or article one of the Constitution of the United States, prohibiting any State from passing a law impairing the obligation of contracts. The plaintiffs claiming that their alleged personal contract so became secured first in 1889, and that in 1889 the statute placed other obligations on the alleged contracts, and not included in the contracts. (13) Because said act of the legislature of 1889 violates sub-section one of section X of article one of the Constitution of the United States and impairs the obligation of contracts when, and as construed by the plaintiffs and plead by them; without which construction and application they cannot recover; in that it appears, from the de-



cree of foreclosure and evidence introduced by them, that the I. & G. N. R. R. was sold out under a mortgage termed the second mortgage, issued in 1881; that the defendant is the assignee and holder as purchaser of all the rights whatsoever accruing to the mortgagees; and further, as to any obligations, claimed by the plaintiffs to have been imposed by the act of 1889 (all of which were additions to and burdens upon the alleged contract asserted by plaintiffs) they are, in violation of said mortgage, attempting to make prior in law rights which were junior in time, if any such rights existed, all of which is in violation of the Constitution of the United States, here and now invoked. (14) It appears that the plaintiffs rely upon said State act of 1889, as construed by them, which act is in violation, when so construed, of section one of article XIV of the Amendments to the Constitution of the United States, commonly called the XIV Amendment; in that such statute imposes great penalties; and in that the insistence that the statute is applicable to the defendant, constitutes an attempt to abridge the privileges and immunities of the defendant and to deprive it of its property without due process of law, and to deny it the equal protection of the law by penalizing or threatening to penalize it at the rate of \$5000 a day, and further penalize it, if it should resort to the courts to resist this action and litigate its rights by refusing to obey such unconstitutional statute. (15) The plaintiffs cannot recover, as admitted by them, without the aid of said State Statute of 1889, which statute, as applied by them, is void and unconstitutional and violates section one of article 14 of the Amendments to the Constitution of the United States; in that it is an undue interference with the business and obligations of the defendant, which it owes to the public in state and interstate commerce; whereby it attempts to interfere with the lawful discretion and power of the defendant to conduct its business within the limits of the law; and whereby it attempts, by

subsequent statute, to place burdens and liens and additions on and securing personal contracts as claimed by the plaintiffs, thereby denying to this defendant the equal protection of the law, and taking its property without due process of law by such illegal interference. (16) That the said act of 1889 of Texas, as applied, is unconstitutional and void, and yet without it the plaintiffs cannot recover; in that such act is applicable only to chartered railroads and not applicable to individuals, receivers or other persons operating as railroad carriers, or to other persons or corporations whatsoever, and so violates section one of article XIV of the Amendments to the Constitution of the United States, being legislation against a species or class, not rightly classified on any legal ground; and in that it places a burden upon the species or class not placed upon other persons and corporations classifiable with it; thereby violating the prohibition of denying to any persons "the equal protection of the laws," and abridging the privileges and immunities of the defendant and depriving it of its property without due process of law. (17) The plaintiffs rely upon the said act of 1889, which is claimed by them to secure their alleged contracts in this case, which as applied, is illegal and void and contrary to the Constitution of the State of Texas: (a) because the same assesses a penalty of an amount prohibited by the Constitution; (b) because the statute as construed and pleaded is retroactive; (c) because the plaintiffs seek to recover in violation of the obligations and terms of the alleged contracts on which they sue, and in violation of the mortgage contract, of the sold out railroad, made in 1881; (d) because such statute is *ex post facto* and pronounces penalties, and therein is contrary to the Constitution of the United States, as well as that of the State; (e) because as construed by plaintiffs the statute denies to the defendant the equal protection of the law and is violative of the due process of law; (f) because such statute as construed by the plaintiffs,

and without which construction they cannot prevail, is an attempt to place on this defendant, never assuming the same, alleged obligations of the sold out I. G. N. R. R. or its predecessors, and which were personal to them. (17a) Because the plaintiffs alleged and attempted to prove a contract binding "forever," the law and Constitution not permitting properties and obligations to be bound up or enforced "forever," and the alleged contracts being as claimed forever, or indeterminate, are terminable at option, if contracts at all, which is not admitted. (18) Because the plaintiffs have introduced the conveyance of the properties of the sold out railroad to this defendant, and also its charter and the decree of foreclosure under which the properties were sold, from which it appears that the defendant bought free of all the obligations now asserted by the plaintiffs. (19) Because plaintiffs have introduced the charter of the defendant, from which it appears the general offices are located at Houston, Texas, and the charter being legally issued, the defendant is bound to maintain its general offices at Houston, Texas. (20) Because it also appears that the H. & G. N. R. R.'s charter, introduced by the plaintiffs, required said offices to be at Houston, Texas, and the charter of the International, introduced by plaintiffs, not designating a definite place for the offices, and the two roads consolidated under act of 1889, the offices are obligated to be kept at Houston, Texas.

And also as follows:

First, because it necessarily refers to something taking place between Judge Stedman, as General Attorney, and his client, and is a privileged communication with regard to all of these matters; and, second, the entire matter is immaterial and irrelevant as to any issues in this case; and, third, the question of notice is entirely immaterial as to any issue in this case, the rights of the parties could not be affected thereby, and, therefore, the whole matter about the newspaper article is confusing;

and, fourth, it is likely to be prejudicial to the rights of the defendant in this case, and it is hearsay, and it was offered only, as defendant understands, in support of a matter or transaction alleged to have been conducted by Judge Reagan himself, in which he was a principal party, and therefore it could not be in explanation of the letters which he wrote away back in 1872 and 1874 with regard to this matter, and that the newspaper article contained self-serving declarations, and further, that after such a great lapse of time, the newspaper could not become a part of the transaction, and further, the newspaper article shows it is merely a political article, written many years after these transactions, and, therefore, it is not admissible, and no inquiry about the same is admissible; and further, because it states conclusions and not facts, and further, because it is prejudicial in its character; and also, that the document, on its face, is incomplete, and goes back and refers to other letters and matters and other documents, to which it is in reply, and without which it is undefined, and that it was unsworn. And the court considered all of the above objections and overruled the same. Whereupon, the defendant excepted, and took its Bill No. 28, and over these objections the newspaper article was read in evidence from the Daily Visitor, of date May 16th, 1899, and set out in the Statement of Facts, commencing with the word "copy" in the middle of page 355, and continuing to the number "6," on page 358. Wherefore, the defendant presents this its Bill No. 28, and prays that it be allowed.

N. A. STEDMAN,  
 F. A. WILLIAMS,  
 ANDREWS, BALL & STREETMAN,  
 WILSON, DABNEY & KING,  
*Attorneys for Defendant.*

Approved:

T. B. GREENWOOD,  
*Atty. for Plffs.*

The foregoing Agreed Bill No. 28 of the defendant was this day presented to me, and is by me this 17th day of March, 1914, in all things approved and allowed.

A. E. DAVIS,

*Judge Sitting in the Trial of This Case.*

### DEFENDANT'S BILL NO. 29.

ANDERSON COUNTY ET AL.

vs.

I. & G. N. RAILWAY COMPANY.

Filed Mar. 18, 1914.

BE IT REMEMBERED that on the trial of this case, the plaintiffs offered in evidence a deed from the I. & G. N. R. R. Co. to Hatfield, Jr., dated September 15th, 1874, for the purpose, as stated, of showing the reservation in the deed of a large piece of ground in the City of Palestine for machine shops, to the introduction of which the defendant objected that it was immaterial and irrelevant, and that an inspection of the deed did not show that it was for the purpose stated, nor was it restricted to Anderson County, but reserved various rights of way and sites at different places and in different counties, and was a general conveyance, with general reservations, which objections were by the court overruled, and the defendant then excepted, and took its Bill No. 29, and over the objections, the deed was read in evidence, its contents being stated in the Statement of Facts on pages 216 and 217, Section 29 thereon. Wherefore, the defendant presents this its Bill No. 29, and prays that it be allowed.

N. A. STEDMAN,

F. A. WILLIAMS,

ANDREWS, BALL & STREETMAN,

WILSON, DABNEY & KING,

Approved:

*Attorneys for Defendant.*

T. B. GREENWOOD,

*Atty. for Plffs.*

The foregoing Agreed Bill No. 29 of the defendant was this day presented to me, and is by me this 17th day of March, 1914, in all things approved and allowed.

A. E. DAVIS,  
*Judge Sitting in the Trial of This Case.*

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**DEFENDANT'S BILL NO. 30.**

ANDERSON COUNTY ET AL.

vs.

I. & G. N. RAILWAY COMPANY.

Filed Mar. 18, 1914.

BE IT REMEMBERED that upon a trial of this case the plaintiffs offered in evidence a deed from the Texas Land Company, wherein it was stated that the grantor was the assignee of Hatfield, Jr., the deed being to the I. & G. N. R. R. Co., dated November 8, 1880, and describing by field notes the land reserved in the original conveyance to Hatfield, Jr., referred to in Bill of Exceptions 29, to which the defendant objected that it was immaterial and irrelevant, and a general conveyance with reservations, which objections were overruled by the court, and the defendant then and there excepted, and over the objections, the deed was introduced in evidence, and is described in the Statement of Facts on page 217, Section 30 thereon. Wherefore, the defendant presents this its Bill No. 30, and prays that it be allowed.

F. A. WILLIAMS,

N. A. STEDMAN,

ANDREWS, BALL & STREETMAN,

WILSON, DABNEY & KING,

*Attorneys for Defendant.*

Approved:

T. B. GREENWOOD,

*Atty. for Plffs.*

The foregoing Agreed Bill No. 30 of the defendant was this day presented to me, and is by me this 17th day of March, 1914, in all things approved and allowed.

A. E. DAVIS,

*Judge Sitting in the Trial of This Case.*

### **DEFENDANT'S BILL NO. 31.**

ANDERSON COUNTY ET AL.

vs.

I. & G. N. RAILWAY COMPANY.

Filed Mar. 18, 1914.

BE IT REMEMBERED that on the trial of this case, the plaintiffs offered in evidence a map purporting to show the Railroad reservation filed December 12th, 1872, and being marked "Office of Chief Engineer, Superintendent of Construction International Railroad, Hearne, Texas, June, 1872." To the introduction of which the defendant objected, 1st, that it was immaterial and irrelevant; 2nd, that it related to the acts of the International Railroad, and not the H. & G. N. R. R.; 3rd, that it was dated long after the matters alleged to have occurred in the petition, which objections were by the court overruled, and the defendant then excepted, and took its Bill No. 31, and over these objections, the map was introduced in evidence, being the map set out in the Statement of Facts next following page 218, and numbered 219. Wherefore, the defendant presents this its Bill of Exceptions No. 31, and prays that it be allowed.

N. A. STEDMAN,

F. A. WILLIAMS,

ANDREWS, BALL & STREETMAN,

WILSON, DABNEY & KING,

*Attorneys for Defendant.*

Approved:

T. B. GREENWOOD,

*Atty. for Plffs.*



The foregoing Agreed Bill No. 31 of the defendant was this day presented to me, and is by me this 17th day of March, 1914, in all things approved and allowed.

A. E. DAVIS,  
*Judge Sitting in the Trial of This Case.*

---

**DEFENDANT'S BILL NO. 32.**

ANDERSON COUNTY ET AL.

vs.

I. & G. N. RAILWAY COMPANY.

Filed Mar. 18, 1914.

BE IT REMEMBERED that upon the trial of this case the plaintiffs offered in evidence a map filed in the office of the County Clerk of Anderson County on June 24th, 1875, to which the defendant objected, 1st, that it was immaterial and irrelevant; 2nd, because it was the act of the International and not of the H. & G. N. Railroad; 3rd, that the I. & G. N. Railroad had moved its headquarters from Houston to Palestine at a date prior to this, and that the map was therefore immaterial. Which objections being considered by the court were by the court overruled, and over these objections the map was introduced in evidence, being set out in the Statement of Facts after page 200, marked page 221. Wherefore, the defendant presents this its Bill of Exceptions No. 32, and prays that it be allowed.

N. A. STEDMAN,  
F. A. WILLIAMS,  
ANDREWS, BALL & STREETMAN,  
WILSON, DABNEY & KING,  
*Attorneys for Defendant.*

Approved:

T. B. GREENWOOD,  
*Atty. for Plffs.*

The foregoing Agreed Bill No. 32 of the defendant was this day presented to me, and is by me this 17th day of March, 1914, in all things approved and allowed.

A. E. DAVIS,

*Judge Sitting in the Trial of this Case.*

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**DEFENDANT'S BILL NO. 33.**

ANDERSON COUNTY ET AL.

vs.

I. & G. N. RAILWAY COMPANY.

Filed Mar. 18, 1914.

BE IT REMEMBERED that upon the trial of this case, the plaintiffs offered in evidence four deeds from the International Railroad Co. to various citizens of Palestine, referring to the map filed December 12th, 1872, for description of date, one, June 1st, 1872, two, June 6th, 1872, and one June 20th, 1872; to the introduction of which four deeds the defendant objected, 1st, that they were immaterial and irrelevant; 2nd, because they were the acts of the International Railroad, and not of the H. & G. N. Railroad, and that there is no contract asserted here of the International Railroad; which objections being overruled by the court, defendant then excepted, and took its Bill 33, and over these objections the deeds were introduced in evidence, being those described on page 222 of the Statement of Facts in Section 33 thereon. Wherefore, the defendant presents this its Bill No. 33, and prays that it be allowed.

N. A. STEDMAN,

F. A. WILLIAMS,

ANDREWS, BALL & STREETMAN,

WILSON, DABNEY & KING,

*Attorneys for Defendant.*

Approved:

T. B. GREENWOOD,

*Atty. for Plffs.*

The foregoing Agreed Bill No. 33 of the defendant was this day presented to me, and is by me this 17th day of March, 1914, in all things approved and allowed.

A. E. DAVIS,  
*Judge Sitting in the Trial of This Case.*

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**DEFENDANT'S BILL NO. 36.**

ANDERSON COUNTY ET AL.

vs.

I. & G. N. RAILWAY COMPANY.

Filed Mar. 18, 1914.

BE IT REMEMBERED that on the trial of this case the witness Ozment was called by the plaintiffs, and was asked whether, if there had been no agreement with Hoxie, "those houses would have been built," to which question and any answer thereto the defendant objected that a conclusion of the witness was involved, and that he did not know what other people would have done. Which objections were overruled by the court, and the defendant then excepted, and took its Bill No. 36, and over the objections the witness testified that the houses would certainly not have been built, all as appears in the Statement of Facts on page 228 thereon. Wherefore, the defendant presents this its Bill No. 36, and prays that it be allowed.

N. A. STEDMAN,  
F. A. WILLIAMS,  
ANDREWS, BALL & STREETMAN,  
WILSON, DABNEY & KING,  
*Attorneys for Defendant.*

Approved:

T. B. GREENWOOD,  
*Atty. for Plffs.*

The foregoing Agreed Bill No. 36 of the defendant was this day presented to me, and is by me this 17th day of March, 1914, in all things approved and allowed.

A. E. DAVIS,

*Judge Sitting in the Trial of This Case.*

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**DEFENDANT'S BILL NO. 38.**

ANDERSON COUNTY ET AL.

vs.

I. & G. N. RAILWAY COMPANY.

Filed Mar. 18, 1914.

Be IT REMEMBERED that upon the trial of this case, Horace Word was called by the plaintiffs, and testified that in January, 1872, he was present in the County Court of Anderson County, as a Deputy Sheriff, when Grow appeared before the court to apply for the County Bonds. He was then asked to state what was said and done there on that occasion. Whereupon, the defendant objected that the relations and obligations between the H. & G. N. R. R. and the County, and the considerations to each other had all been stated; that there would be no consideration for a new contract or new promises, and that the declarations and admissions of Grow, if any, as agent, were inadmissible after so long a time after the event, and furthermore, made the following objections:

(1) That it now developed, as shown by the contract with the County introduced by the plaintiffs that there was a complete and perfectly legal written contract between Anderson County, Texas, and the H. & G. N. R. R., required by law to be in writing, and which could only legally be formed in writing, which, as shown by the petition, it was proposed to modify, add to, change, or vary by parol testimony; and that such writing being complete in itself could not be so modified, changed, varied

or added to. (2) That the testimony offered as to what Grow said and others said was hearsay. (3) That the testimony is offered, as appears by the pleadings and the statement now made by the plaintiffs, in support of a contract alleged to have been made in behalf of the citizens of Palestine acting by Judge Reagan, upon an illegal consideration, to wit: Judge Reagan's alleged undertaking to induce and influence the voters of the county to vote a bond issue, the alleged consideration to the railroad being solely the engagement of Judge Reagan to induce and advocate such a bond issue. (4) That the evidence is offered for the purpose of showing an agreement or an alleged contract, in promotion of a County contract, and to attach to the County contract, which is in writing, an alleged promotion contract, which, if made, would be upon an illegal consideration and is prohibited by law and public policy. (5) That after the lapse of over 40 years it is not permissible to prove, in connection with a written contract with the County and the public, what were the inducements or considerations or representations outside of the written contract there were upon which it was made, nor can a written contract adopted by the voters be so modified. (6) That it appears from the pleadings, and tender of the testimony, that it is now proposed to show that Judge Reagan's services were hired to induce and influence the voters of Anderson County to vote a bond issue, on inducements outside of the writings, that the shops and general offices were to be erected in Palestine for the benefit of the people of Palestine, as contradistinguished from the people of the County, and that it would have been illegal to arrange to bestow such benefits upon the people of part of the county as contradistinguished from the people of all of the county. (7) That the proposed agreement, as plead and as proposed to be testified to in parol, if legal and provable under the law, which is denied, would have to be in writing, and comes within the terms of the statute of frauds, which is now

invoked; and therefore it is not provable in parol. (8) That after the lapse of over 40 years and after rights had been acquired and acted upon by various parties, on the basis of the written contract and agreement already introduced, it is not permissible to prove by parol the alleged contract. (8a) That a record of the transaction with the County introduced by plaintiffs, showed the judgment of the County Court settling the whole matter and the considerations for the contract, adjudged to have been performed by the railroad, whereby the matter was *res adjudicata*, and the parties estopped. (9) That there is no evidence that Grow had any authority to make any agreement, such as is proposed to be shown by parol, because the law lodged the authority to make any such agreement, if it could be made at all, wholly with the board of directors, and, furthermore, that there is no evidence whatsoever of the ratification of such an agreement, which ratification could only be by the board of directors. (10) That the testimony would be immaterial and irrelevant. (11) It appears by the decree of foreclosure of the sold out International & Great Northern Railroad Company in May, 1910, and introduced by the plaintiffs, that all of the issues involved in said proposed testimony were settled, and if not settled were reserved exclusively for the United States Court. (12) The plaintiffs rely upon the act of the Legislature of Texas of 1889, carried into articles 6423-4-5 of the present Revised Statutes of Texas, and are now claiming that by such act, long subsequent to the alleged contract which they plead in this case, a lien, burden, or servitude were fixed upon the property or properties, or some of them, of the sold out I. & G. N. R. R., which have been acquired by this defendant; without which lien or burden they can not recover; and in that by this statute and its terms they are extending and attempting to burden and add to the alleged contracts in its extensions and purported obligations, by going beyond the alleged contracts, whereby it appears, when applied to the facts of this case,

that such act of 1889, as so construed, is unconstitutional and void and violates sub-section one of section X of article one of the Constitution of the United States, prohibiting any State from passing a law impairing the obligation of contracts. The plaintiffs claiming that their alleged personal contract so became secured first in 1889, and that in 1889 the statute placed other obligations on the alleged contracts, and not included in the contracts. (13) Because said act of the legislature of 1889 violates sub-section one of section X of article one of the Constitution of the United States and impairs the obligation of contracts when, and as construed by the plaintiffs and plead by them; without which construction and application they cannot recover; in that it appears, from the decree of foreclosure and evidence introduced by them, that the I. & G. N. R. R. was sold out under a mortgage termed the second mortgage, issued in 1881; that the defendant is the assignee and holder as purchaser of all the rights whatsoever accruing to the mortgagees; and further, as to any obligations, claimed by the plaintiffs to have been imposed by the act of 1889 (all of which were additions to and burdens upon the alleged contract asserted by plaintiffs) they are, in violation of said mortgage, attempting to make prior in law rights which were junior in time, if any such rights existed, all of which is in violation of the Constitution of the United States, here and now invoked. (14) It appears that the plaintiffs rely upon said State act of 1889, as construed by them, which act is in violation, when so construed, of section one of article XIV of the Amendments to the Constitution of the United States, commonly called the XIV Amendment; in that such statute imposes great penalties; and in that the insistence that the statute is applicable to the defendant, constitutes an attempt to abridge the privileges and immunities of the defendant and to deprive it of its property without due process of law, and to deny it the equal protection of the law by penalizing or threatening to penalize it at the rate of \$5,000 a day, and further



penalize it, if it should resort to the courts to resist this action and litigate its rights by refusing to obey such unconstitutional statute. (15) The plaintiffs can not recover, as admitted by them, without the aid of said State Statute of 1889, which statute, as applied by them, is void and unconstitutional and violates section one of article 14 of the Amendments to the Constitution of the United States; in that it is an undue interference with the business and obligations of the defendant, which it owes to the public in state and interstate commerce; whereby it attempts to interfere with the lawful discretion and power of the defendant to conduct its business within the limits of the law; and whereby it attempts, by subsequent statute, to place burdens and liens and additions on and securing personal contracts as claimed by the plaintiffs, thereby denying to this defendant the equal protection of the law and taking its property without due process of law by such illegal interference. (16) That the said act of 1889 of Texas, as applied, is unconstitutional and void, and yet without it the plaintiffs can not recover; in that such act is applicable only to chartered railroads and not applicable to individuals, receivers or other persons operating as railroad carriers, or to other persons or corporations whatsoever, and so violates section one of article XIV of the Amendments to the Constitution of the United States, being legislation against a species or class, not rightly classified on any legal ground; and in that it places a burden upon the species or class not placed upon other persons and corporations classifiable with it; thereby violating the prohibition of denying to any persons "the equal protection of the laws," and abridging the privileges and immunities of the defendant and depriving it of its property without due process of law. (17) The plaintiffs rely upon the said act of 1889, which is claimed by them to secure their alleged contracts in this case, which as applied, is illegal and void and contrary to the Constitution of the State of Texas: (a) because the same assesses a penalty of an

amount prohibited by the Constitution; (b) because the statute as construed and pleaded is retroactive; (c) because the plaintiffs seek to recover in violation of the obligations and terms of the alleged contracts on which they sue and in violation of the mortgage contract, of the sold out railroad, made in 1881; (d) because such statute is *ex post facto* and pronounces penalties, and therein is contrary to the Constitution of the United States, as well as that of the state; (e) because as construed by plaintiffs the statute denies to the defendant the equal protection of the law and is violative of the due process of law; (f) because such statute as construed by the plaintiffs, and without which construction they can not prevail, is an attempt to place on this defendant, never assuming the same, alleged obligations of the sold out I. & G. N. R. R. or its predecessors, and which were personal to them. (17a) Because the plaintiffs alleged and attempted to prove a contract binding "forever," the law and Constitution not permitting properties and obligations to be bound up or enforced "forever," and the alleged contracts being as claimed forever, or indeterminate, are terminable at option, if contracts at all, which is not admitted. (18) Because the plaintiffs have introduced the conveyance of the properties of the sold out railroad to this defendant, and also its charter and the decree of foreclosure under which the properties were sold, from which it appears that the defendant bought free of all the obligations now asserted by the plaintiffs. (19) Because plaintiffs have introduced the charter of the defendant, from which it appears the general offices are located at Houston, Texas, and the charter being legally issued, the defendant is bound to maintain its general offices at Houston, Texas. (20) Because it also appears that the H. & G. N. R. R.'s charter, introduced by the plaintiffs, required said offices to be at Houston, Texas, and the charter of the International, introduced by plaintiffs, not designating a definite place for the offices, and

the two roads consolidated under act of 1889, the offices are obligated to be kept at Houston, Texas.

Furthermore:

That the relations and obligations between the H. & G. N. R. R. and the County, and considerations to each other, had all been settled, and that there would be no considerations for a new contract or new promises, and that declarations and admissions of Grow, if any, as agent, were inadmissible after so long a time after the event.

Which objections being considered by the court, were by him overruled, and the defendant took its Bill of Exceptions No. 38, and over these objections the witness testified as set out on pages 238 and 239 of the Statement of Facts, commencing in the 4th line from the top of page 238, and continuing through the 3rd line from the top of page 239. Wherefore, the defendant presents this its Bill No. 28, and prays that it be allowed.

N. A. STEDMAN,  
F. A. WILLIAMS,  
ANDREWS, BALL & STREETMAN,  
WILSON, DABNEY & KING,  
*Attorneys for the Defendant.*

Approved:

T. B. GREENWOOD,  
*Atty. for Plffs.*

The foregoing Agreed Bill No. 38 of the defendant was this day presented to me, and is by me this 17th day of March, 1914, in all things approved and allowed.

A. E. DAVIS,  
*Judge Sitting in the Trial of This Case.*

**CHARGE OF THE COURT NO. 1.**

ANDERSON COUNTY ET AL.

vs.

No. 6415.

I. &amp; G. N. R'Y CO.

Filed the 15th day of January, A. D. 1914.

In the District Court of Cherokee County, Texas.

Gentlemen of the Jury:

By request of all parties, without either plaintiffs or defendant waiving any right to a peremptory instruction, this cause will be submitted to you upon special issues, raised by the pleadings and evidence.

This means that the court will submit to you distinct and separate questions, to each of which you should return a distinct and separate answer.

The court will give you such instructions, in connection with each question, as may be deemed necessary to enable you to properly determine same.

Question No. One:

Do you find from the preponderance of the evidence that the Houston and Great Northern Railroad Company, acting by its President, Galusha A. Grow, on or about the 15th day of March, 1872, contracted and agreed, with the citizens of Palestine, acting by John H. Reagan, to extend its line of railroad to intersect the International railroad at Palestine, and to establish a depot within a half mile of the Court House at Palestine, and to commence running cars regularly thereto by July 1st, 1873, and to thereupon locate, and forever thereafter maintain, the general offices, machine shops and roundhouses of the Houston and Great Northern Railroad, at the City of Palestine, for and in consideration of an agreement by John H. Reagan, to make a thorough canvass of Anderson County, to induce the electors of that County to authorize the issuance of interest bearing bonds of the County in the principal sum of \$150,000, and upon the further consideration that Anderson County, on author-

ization of its electors, should issue and deliver its bonds, in the principal sum aforesaid?

Answer "Yes," or "No."

Question Number Two:

Do you find from the preponderance of the evidence that Anderson County, on authorization of its electors, issued and delivered to the Houston & Great Northern Railroad Company its interest bearing bonds in the principal sum of \$150,000, within a year from the date of the contract and agreement mentioned in Question Number One, if you find there was any such contract and agreement; and that Judge John H. Reagan made a thorough canvass of Anderson County to induce the electors to vote said bonds; and that the Houston & Great Northern Railroad Company and the International & Great Northern Railroad Company, in part performance of the contract and agreement mentioned in Question Number One, if you find there was any such contract and agreement, and in compliance with said contract and agreement, if any, established and thereafter maintained at Palestine, the machine shops and round houses of the Houston & Great Northern Railroad and of the International & Great Northern Railroad?

Answer "Yes," or "No."

Question Number Three:

Do you find from the preponderance of the evidence that the Houston and Great Northern Railroad Company authorized or ratified the action of Galusha A. Grow in making (if you find that he did make) the contract and agreement mentioned in Question Number One?

Answer "Yes," or "No."

In determining whether the Railroad Company authorized or ratified the action in its behalf, if any, of Galusha A. Grow, you are instructed that the power to authorize or ratify such action was vested in the Company's board of directors, and your answer to this Question Number Three should be determined by your finding from the

evidence as to whether a board of directors of the company conferred the authority on said Grow to make the contract and agreement (if any) or, knowing of his having exercised such authority (if he did so) approved of his action.

It is not necessary, in order to bind a railroad company by the action of an assumed agent, that the board of directors should have caused to be spread upon their minutes a formal resolution expressly authorizing or approving the action claimed to have been authorized or ratified, nor is it necessary, in order to bind a railroad company by the action of an assumed agent that the board of directors should have both authorized and ratified the action of the assumed agent; but it is necessary that such action should be either authorized or ratified by the board of directors.

Question Number Four:

Do you find from the preponderance of the evidence that about the first of the year 1875 the International and Great Northern Railroad Company, acting by its general superintendent, H. M. Hoxie, contracted and agreed with the citizens of the City of Palestine, among whom were the plaintiffs Geo. A. Wright and J. W. Ozment, to fully and completely perform a previous contract and agreement, if any there was, between the Houston and Great Northern Railroad Company, acting by Galusha A. Grow, and the citizens of Palestine, acting by John H. Reagan, by at once locating the general offices of the International and Great Northern Railroad at Palestine, and by thereafter forever keeping and maintaining the general offices, machine shops, and round houses of said International and Great Northern Railroad at Palestine, for and in consideration of certain bonds of Anderson County therefore issued to the Houston and Great Northern Railroad Company, and for the further and additional consideration that said citizens should at once construct and complete, or cause to be constructed and completed, at their

own cost and expense, any and all houses at Palestine, Texas, which might be demanded by said Company, in accordance with such plans or directions as might be furnished by the Company, through its officers, for occupancy, at reasonable rentals, by employees of said Company and their families, and especially by general officers, their families and clerks?

Answer "Yes," or "No."

Question Number Five:

Do you find from the preponderance of the evidence that the citizens of Palestine did, in the early part of the year 1875, and within twelve months from the date of the contract between certain citizens of said City and the International and Great Northern Railroad Company (if such contract there was), construct and complete, or cause to be constructed and completed, at their own cost and expense, certain houses at Palestine, Texas, and that the same, if any, were all the houses which were demanded by the International and Great Northern Railroad Company, and that said houses, if any, were constructed and completed, in accordance with the plans or directions furnished therefor (if any) by said company, through an officer of same, for occupancy, at reasonable rentals, by the employees of said Company, including general officers, their families and clerks?

Answer "Yes," or "No."

Question Number Six:

Do you find from the preponderance of the evidence that the International and Great Northern Railroad Company authorized or ratified the action of H. M. Hoxie in making (if you find he did make) the contract and agreement, of date early in 1875, mentioned in Question No. Four?

Answer "Yes," or "No."

In this connection, you are charged that if you find from the preponderance of the evidence in this case that the International and Great Northern Railroad Com-



pany, after its formation by the consolidation of the Houston and Great Northern Railroad Company with the International Railroad Company, and early in the year 1875, did, through its general superintendent, H. M. Hoxie, contract and agree with certain citizens of the City of Palestine, including plaintiffs Wright and Ogment, that in consideration of the bond theretofore issued to the Houston and Great Northern Railroad Company, and in consideration that the citizens of Palestine should at once construct and complete, or cause to be constructed and completed at their own cost and expense, such houses at Palestine, as might be demanded by said Company, in accordance with plans or directions to be furnished by the Company, through its officers, for occupancy, at reasonable rentals, by employees of said Company and their families and clerks, the said International and Great Northern Railroad Company, on its part, would at once locate the general offices of said Company at Palestine and forever thereafter keep and maintain the general offices, machine shops and roundhouses of said International and Great Northern Railroad at Palestine, and would thereby fully and completely carry out and perform the contract between the Houston and Great Northern Railroad Company, acting by Galusha A. Grow, and the citizens of Palestine, acting by John H. Reagan (if any such contract there was), and if you further find, from the preponderance of the evidence, that the International and Great Northern Railroad Company had full knowledge of said contract between the citizens of Palestine and the Houston and Great Northern Railroad Company, if any, and of its terms, if any, and of said contract and agreement between certain citizens of Palestine and said general superintendent, H. M. Hoxie, if any, and of its terms, if any, and if you further find that in pursuance of said last mentioned contract and agreement, if any, certain citizens of Palestine at once constructed and completed, or caused

to be constructed and completed, at their own cost and expense, any and all houses demanded under said contract and agreement (if any), in full compliance with their obligations to said Company under said contract and agreement, if any, to the satisfaction of said Company; and if you further find that the International and Great Northern Railroad Company, acting by its board of directors, in pursuance of said contract and agreement of date early in the year 1875 (if any there was), and with the intention to adopt same (if any), and to perform the obligations imposed by said contract and agreement (if any) on said Company, did locate and establish the general offices of the International and Great Northern Railroad at Palestine, then you should answer this Question Number Six with the word "Yes"; but, if you fail to so find, then you should answer this Question Number Six with the word "No."

The form of your verdict, which you should write on a separate sheet of paper, will be as follows:

"Anderson County et al.

vs.

No. 6415.

"International & Great Northern Railway Company.

"In the District Court of Cherokee County.

"Verdict on Special Issues.

"To Question Number One, we answer.....

"To Question Number Two, we answer.....

"To Question Number Three, we answer.....

"To Question Number Four, we answer.....

"To Question Number Five, we answer.....

"To Question Number Six, we answer.....

"To Question Number Seven, we answer.....

(Signed) ".....

"Foreman."

You will fill in each blank in each answer with the word "Yes" or the word "No," as you may find from the evidence.

Let your verdict be signed by your foreman, whom you

will select.

You are the exclusive judges of the facts proved, the weight of the evidence and the credibility of the witnesses.

A. E. DAVIS,  
*Judge Presiding.*

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### OBJECTIONS TO THE COURT'S CHARGE.

ANDERSON COUNTY ET AL.

vs.

No.

INTERNATIONAL & GREAT NORTHERN RAIL-  
WAY COMPANY.

Filed Jan. 15, 1914.

In the District Court of Cherokee County, Texas.

The defendant submits to the Court the following objections to the charge submitted to them by the Court, and to the issues therein stated:

To the submission of any special issues contained in the charge submitted by the Court the defendant objects that the Court should peremptorily charge for it, and that it will submit the peremptory charge which should be given. Subject to its contention that a peremptory charge should be given in its behalf, defendant objects to charge submitted by the Court as follows:

To Question No. One, defendant objects—

1st. That it submits an issue based on conversations between Reagan and Grow, which did not contain the elements of a contract between them, or between the Railroad Company and the citizens of Palestine, but were merely preliminary negotiations intended to state a proposition to be submitted to the voters of Anderson County for their decision upon the issuance of bonds of the County to the Company.

2nd. The first question in the charge assumes that there may have been a contract, as alleged, which implies that there was a consideration to Reagan and the citizens of Palestine distinct from that to be received by the County or the citizens of the County at large for the bonds, in return for the services of Reagan and the citizens of Palestine in inducing the voters of the County to vote for the proposed bond issue, and this would render any such contract illegal and void as against public policy.

3rd. The question stated does not require the jury to find facts constituting a contract, but merely requires them to find that the parties contracted, thereby mingling with each other issues which should be submitted separately and distinctly.

4th. The question stated submits to the jury questions of law intermingled with questions of fact, in that it leaves to the jury to determine whether or not the parties named contracted, whether or not the citizens of Palestine were acting by Reagan, and whether or not there was consideration for Reagan's and Grow's promises without further definition or instruction.

5th. The question stated attempts to engraft on a contract formed between the railroad company and the County another and different contract between the railroad company and other persons, of which the bonds to be voted by the County was a part of the consideration.

ANDERSON COUNTY ET AL.

vs.

No.

INTERNATIONAL & GREAT NORTHERN RAILWAY COMPANY.

In the District Court of Cherokee County, Texas.

The defendant submits to the Court the following objections to the charge submitted to its counsel by the Court, and to the issues therein stated.

To Special Issue No. Two defendant objects—

1st. The question stated submits together several dis-

tinct issues, viz: (a) Whether or not Reagan canvassed the County. (b) Whether or not the County granted the bonds. (c) Whether or not the Railroad Companies established and maintained offices and shops &c. at Palestine. (d) Whether or not this was done in part performance of the agreement between Reagan and Grow.

ANDERSON COUNTY ET AL.

vs.

No.

INTERNATIONAL & GREAT NORTHERN RAILWAY COMPANY.

In the District Court of Cherokee County, Texas.

The defendant's counsel submits to the Court the following objections to the charge submitted to them by the Court, and to the issues therein stated.

To Special Issue No. Three defendant objects—

1st. It submits to the jury the question of authority for Grow's action, and also of ratification of that action, when there is no competent evidence for either authority or ratification.

2nd. The question stated submits as one, the distinct issues of authority and ratification.

3rd. To the direction proposed in the charge of the Court in connection with Question Three, the defendant objects that it is incomplete and misleading in that it is not therein stated that in order to bind the railroad it was necessary that the Board of Directors should act as a body, and in that it is not stated that the separate action of the majority or all of the Board not acting as a body is insufficient.

ANDERSON COUNTY ET AL.

vs.

No.

INTERNATIONAL & GREAT NORTHERN RAILWAY COMPANY.

In the District Court of Cherokee County, Texas.

The defendant objects to Question No. Four submitted by the Court for the following reasons:

1. The pleading and evidence do not show the essen-

tials of a contract in the transaction referred to in the question.

2. If a contract is alleged, and if there is evidence sufficient to support it, it was not in writing, was not to be performed within a year, and was within the Statute of Frauds.

3. The question assumes that there may have been a contract with the private citizens of Palestine, based on a previous contract with, and a consideration moving from, Anderson County, such consideration having already been received by the County, as was called for by the railroad company's contract with it.

4. The question submits questions of law intermingled with questions of fact, in that it leaves the jury to say whether or not the parties "contracted," without informing them of the legal elements of a contract.

The defendant also objects to question No. 6, submitted by the Court, for the following reasons:

1. There is no evidence of authority to Hoxie to make the alleged contract.

2. There is no evidence of a ratification of Hoxie's acts in making such a contract.

3. The question gives no instructions as to how authority could have been conferred or ratification accomplished.

The defendant also objects to the construction given in the charge submitted by the Court following question No. Six, the objections being the same as those above made to Question No. Four.

THE INTERNATIONAL AND GREAT  
NORTHERN R'Y Co.,

By Its Atty's,

F. A. WILLIAMS,

ANDREWS, BALL & STREETMAN,

N. A. STEDMAN,

WILSON, DABNEY & KING,

NORMAN & SHOOK.

The above and foregoing exceptions were presented to me by the attorneys for defendant, and were by the court overruled before the charge of the court was read to the jury, and to all of which the defendant in open court excepted.

A. E. DAVIS,  
*Judge Presiding.*

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**SPECIAL CHARGE NO. 2, REQUESTED BY  
DEFENDANT.**

ANDERSON COUNTY ET AL.

vs.

No. 6415.

INTERNATIONAL & GREAT NORTHERN RAIL-  
WAY COMPANY.

Filed Jan. 15, 1914.

In the District Court of Cherokee County, Texas.

The defendant requests the Court to give the following instructions:

Gentlemen of the Jury:

You are instructed to return a verdict for the defendant.

ANDREWS, BALL & STREETMAN,  
F. A. WILLIAMS,  
N. A. STEDMAN,  
WILSON, DABNEY & KING,  
NORMAN & SHOOK,  
DONLEY,  
GUINN,

*Attorneys for Defendant.*

Presented and refused before the reading of the charge of the Court to the jury, this Jany. 15th, 1914.

A. E. DAVIS,  
*Judge Judicial District, Presiding.*



**SPECIAL CHARGE NO. 2, REQUESTED BY  
DEFENDANT.**

ANDERSON COUNTY ET AL.

vs.

No. 6415.

INTERNATIONAL & GREAT NORTHERN RAIL-  
WAY COMPANY.

Filed Jan. 15, 1914.

In the District Court of Cherokee County, Texas.

The defendant requests the Court to give the following instructions:

Gentlemen of the Jury:

You are instructed that the evidence in this case warrants no recovery by the plaintiffs upon the alleged agreement between Grow, representing the Houston & Great Northern Railroad Company, and Reagan, representing the citizens of Palestine, alleged to have been made in March, 1872. You will, therefore, leave that transaction out of consideration in coming to a verdict.

ANDREWS, BALL & STREETMAN,  
F. A. WILLIAMS,  
N. A. STEDMAN,  
WILSON, DABNEY & KING,  
NORMAN & SHOOK,  
DONLEY,  
GUINN,

*Attorneys for Defendant.*

Presented and refused before the reading of the charge of the Court to the jury, this Jan. 15th, 1914.

A. E. DAVIS,

*Judge 1st Judicial District, Presiding.*

**SPECIAL CHARGE NO. 3, REQUESTED BY  
DEFENDANT.**

ANDERSON COUNTY ET AL.

vs.

No. 6415.

INTERNATIONAL & GREAT NORTHERN RAIL-  
WAY COMPANY.

Filed Jan. 15, 1914.

In the District Court of Cherokee County, Texas.

The defendant requests the Court to give the following instructions:

Gentlemen of the Jury:

You are instructed that the record of the election proceedings in which the voters of Anderson County voted in favor of the issuance of bonds in the sum of one hundred fifty thousand dollars to the Houston & Great Northern Railroad Company, and of the action thereon taken by the Commissioners' Court, is the exclusive evidence of the contract between the County of Anderson and that Railroad Company, and furnishes no basis for a recovery by the plaintiffs in this case.

You are further instructed that promises alleged to have been made by Grow, or others, during the canvass preceding that election, or afterwards, when the bonds were issued and delivered to Grow, concerning the location of general offices, round houses and machine shops, constituted no contract with the County of Anderson, or with anyone else, and you cannot base a verdict upon any contract claimed to have been thus made between the Railroad Company and the County.

ANDREWS, BALL & STREETMAN,  
F. A. WILLIAMS,  
N. A. STEDMAN,  
WILSON, DABNEY & KING,  
NORMAN & SHOOK,  
DONLEY,  
GUINN,

*Attorneys for Defendant*

Presented and refused before the charge of the Court was read to the jury, this Jany. 15th, 1914.

A. E. DAVIS,  
*Judge 1st Judicial District, Presiding.*

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**SPECIAL CHARGE NO. 4, REQUESTED BY  
DEFENDANT.**

ANDERSON COUNTY ET AL.

vs.

No. 6415.

INTERNATIONAL & GREAT NORTHERN RAIL-  
WAY COMPANY.

Filed Jan. 15, 1914.

In the District Court of Cherokee County, Texas.

The defendant requests the Court to give the following instructions:

Gentlemen of the Jury:

You are instructed that the so-called Rent-House Contract, alleged to have been made between Hoxie for the Railroad Company and citizens of Palestine, including Wright and Ozment, of date 1875, furnishes no basis for a recovery by plaintiffs in this case, and you will base no verdict for plaintiffs upon that contract.

F. A. WILLIAMS,  
N. A. STEDMAN,  
ANDREWS, BALL & STREETMAN,  
NORMAN & SHOOK,  
DONLEY,  
GUINN,

*Attorneys for Defendant.*

Presented and refused before the reading of the charge of the Court to the jury, this Jany. 15th, 1914.

A. E. DAVIS,  
*Judge 1st Judicial District, Presiding.*

**SPECIAL ISSUES NOS. 1, 2, 3 AND 4, REQUESTED BY  
DEFENDANT.**

ANDERSON COUNTY ET AL.

vs.

No. 6415.

INTERNATIONAL & GREAT NORTHERN RAIL-  
WAY COMPANY.

Filed Jan. 15, 1914.

In the District Court of Cherokee County, Texas.

In case the Court shall refuse the instruction requested by defendant, peremptorily instructing the jury to return a verdict for it, and also refuse its second special charge directing the jury to disregard the alleged Reagan-Grow contract, the defendant requests the Court to submit in lieu of question No. One, stated in the charge submitted to counsel for defendant by the Court, the following questions:

Question No. One:

Referring to the alleged contract between Reagan and Grow, of 1872, you will answer the following question on what took place between Reagan and Grow, to which this relates:

Was Reagan acting as the representative of the citizens of Palestine in promoting some interest of theirs separate from the interests of the citizens of the County at large, or was he acting merely as a citizen of Anderson County, and in the interest of the entire County? Let your answer specify how and in whose interest, and as whose representative he was acting.

Question No. Two:

Was Reagan authorized by the citizens of Palestine to represent them in concluding, at the time of his transaction with Grow, a contract for their benefit, and for the promotion of some interest of theirs other than that of the citizens of the County generally? Answer "yes" or "no," and if you answer yes, state what that other interest was.

**Question No. Three:**

What benefit or advantage was Reagan or the citizens of Palestine, or both, to receive under the agreement, if there was an agreement, in consideration of Reagan's promise to canvass Anderson County, to induce or influence the voters to vote for the issuance of the County bonds?

**Question No. Four:**

Having in mind your answers to the three preceding questions, answer the following:

Did Grow, intending then to make a contract to be in force from that time, make an offer to Reagan that the Houston & Great Northern Railroad Company would extend its road to Palestine and there form a junction with the International Railroad and establish and forever maintain at that place a depot within one-half mile of the Courthouse, and would also establish and forever maintain at Palestine the general offices, machine shops and round houses of said Company in consideration of Reagan's making a thorough canvass of the County to induce the voters to vote for the issuance of the bonds of said County to the Railroad Company, and of the voters so voting and of the County's issuing the bonds, and did Reagan, while acting especially as the representative of the citizens of Palestine, as above explained, accept said offer and agree, intending to bind himself from that time, to make such canvass of the County to induce or influence the voters to vote in favor of the granting of bonds of the County to said Railroad Company? Answer yes or no.

In connection with Question No. Four, you are instructed that the burden is on the plaintiff to prove by a preponderance of the evidence each fact inquired about in this question, and if this has been done you will answer "yes," but if you should find that what was said between Reagan and Grow did not amount to an offer and acceptance, as stated in the question,

made and accepted with the intention of forming a contract to take effect from that time forth, or if Grow and Reagan had no intention then to conclude a contract, binding on the Railroad company and on Reagan and the citizens of Palestine, you will answer "no." Conversations or negotiations intended only to agree upon a proposal or question to be submitted to the voters of the County to ascertain whether or not they would authorize the issuance of the bonds would not amount to a contract, and if that was the case, you will answer "no." Nor would mere statements by Grow that the railroad company expected or intended to locate and forever maintain its general offices, machine shops and round houses at Palestine amount to a contract to do that, if he and Reagan did not then intend and regard themselves as making a binding agreement that this should be done in case Reagan made the canvass and the election should be in favor of issuing the bonds.

Should you find that Reagan and Grow did conclude a contract, as inquired about in this question, but that it did not include the general offices, machine shops and round houses, or that it included the machine shops and round houses, but did not include the general offices, you will not answer yes, but state what was included in the contract.

F. A. WILLIAMS,  
N. A. STEDMAN,  
ANDREWS, BALL & STREETMAN,  
WILSON, DABNEY & KING,  
GUINN,  
DONLEY,

*Attorneys for Defendant.*

Submitted and refused before the reading of the charge of the court to the jury, this Jany. 15th 1914.

A. E. DAVIS,  
*Judge 1st Judicial District, Presiding.*

**SPECIAL ISSUE NO. 5, REQUESTED BY DEFENDANT.**  
**ANDERSON COUNTY ET AL.**

vs.

No. 6415.

**INTERNATIONAL & GREAT NORTHERN RAIL-  
WAY COMPANY.**

Filed Jan. 15, 1914.

In the District Court of Cherokee County, Texas.

In case the Court refuses to instruct the jury to return a verdict for defendant, and also its second Special Charge directing the jury to disregard the alleged Reagan-Grow contract, defendant requests the Court to submit to the jury the following Special Issue:

In the matter of procuring the Houston & Great Northern Railroad Company to come to Anderson County to a junction with the International Railroad, was Judge John H. Reagan acting for Anderson County as a whole and not as the special representative of the citizens of Palestine, and in the matters connected therewith, was the contract or agreement as finally consummated, that the Houston & Great Northern Railroad Company should build to Palestine within a specified time to a junction with the International Railroad at Palestine, and establish and maintain a depot within one-half mile of the Court House of Anderson County, and that Galusha A. Grow, the President of the Houston & Great Northern Railroad Company, acting for it, and Judge Reagan, acting for Anderson County, without authority from the railroad company, but believing that Palestine was the logical and proper place for the location of the general offices, machine shops and round houses of the railroad company, and that if the bonds were voted amounting to One Hundred and Fifty Thousand Dollars by Anderson County, that they would be so located and that Judge Reagan and Grow jointly or severally urged and assured the voters, pending the bond election, that they would be so located, as arguments or promises to induce said voters to vote said bonds, and that the city of Palestine, as such,



had no other part in said election than to aid in enlisting the services and influence of Judge Reagan and to participate in said campaign and election in common with the voters of Anderson County. Answer "yes" or "no."

F. A. WILLIAMS,  
N. A. STEDMAN,  
ANDREWS, BALL & STREETMAN,  
WILSON, DABNEY & KING,  
NORMAN & SHOOK,  
GUINN,  
DONLEY,

*Attorneys for Defendant.*

Submitted and refused before charge of Court was read to jury, this Jan. 15th, 1914.

A. E. DAVIS,  
*Judge 1st Judicial District, Presiding.*

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**SPECIAL ISSUE NO. 6, REQUESTED BY DEFENDANT.**

ANDERSON COUNTY ET AL.

vs.

No. 6415.

INTERNATIONAL & GREAT NORTHERN RAIL-  
WAY COMPANY.

Filed Jan. 15, 1914.

In the District Court of Cherokee County, Texas.

Should the Court refuse defendant's requested instruction for a peremptory instruction, directing a verdict for the defendant, and also refuse defendant's requested charge No. Four concerning the Rent House Contract, the defendant requests the following additional question to be submitted in addition to Question No. Four in the Charge submitted by the court to counsel for defendant:

Question No. : If you find there was an agreement between Hoxie and Wright, Ozment and others, as inquired about in Question No. Four, answer further

whether or not Wright, Ozment and others bound themselves to rent the houses referred to to officers and employees of the International & Great Northern Railway Company.

Answer "Yes" or "No."

If you answer "yes," for how long a time did they bind themselves so to rent?

F. A. WILLIAMS,  
N. A. STEDMAN,  
ANDREWS, BALL & STREETMAN,  
NORMAN & SHOOK,  
F. B. GUINN,  
W. E. DONLEY,  
WILSON, DABNEY & KING,

*Attys. for Defendant.*

Presented and refused before reading of charge of Court to jury, this Jany. 15th, 1914.

A. E. DAVIS,  
*Judge 1st Judicial District, Presiding.*

**SPECIAL ISSUE NO. 7, REQUESTED BY DEFENDANT.**

ANDERSON COUNTY ET AL.

vs.

No. 6415.

INTERNATIONAL & GREAT NORTHERN RAIL-  
WAY COMPANY.

Filed Jan. 15, 1914.

In the District Court of Cherokee County, Texas.

In the event that the Court should refuse to charge peremptorily for the defendant, as requested, the Court is requested to submit the following:

Do you, or not, find from a preponderance of the evidence that if the International & Great Northern Railway Company was required to have its general offices

at Palestine, Texas, forever, that thereby a burden would be placed upon Interstate Commerce?

F. A. WILLIAMS,  
N. A. STEDMAN,  
ANDREWS, BALL & STREETMAN,  
WILSON, DABNEY & KING,  
F. B. GUINN,  
W. E. DONLEY,  
N. B. NORRIS,  
NORMAN & SHOOK,  
*Attys. for Defendant.*

Presented and refused before charge of Court was read to jury, this Jany. 15, 1914.

A. E. DAVIS,  
*Judge 1st Judicial District, Presiding.*

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**ISSUE NO. 8, REQUESTED BY DEFENDANT.**

ANDERSON COUNTY ET AL.

vs.

No. 6415.

INTERNATIONAL & GREAT NORTHERN RAIL-  
WAY COMPANY.

Filed Jan. 15, 1914.

In the District Court of Cherokee County, Texas.

In the event that the Court refuses to charge peremptorily for the defendant, as requested, the Court is requested to submit the following question to the jury:

Do you, or not, find from a preponderance of the evidence that in the event that the International & Great Northern Railway Company should be required to keep and maintain its shops at Palestine, Texas, forever, that

thereby a burden would be placed upon Interstate Commerce?

F. A. WILLIAMS,  
N. A. STEDMAN,  
ANDREWS, BALL & STREETMAN,  
N. B. NORRIS,  
F. B. GUINN,  
W. E. DONLEY,  
WILSON, DABNEY & KING,  
NORMAN & SHOOK,

*Attys. for Defendant.*

Presented and refused before charge of Court was read to jury this Jany. 15th, 1914.

A. E. DAVIS,  
*Judge 1st Judicial District, Presiding.*

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**SPECIAL ISSUE NO. 9, REQUESTED BY DEFENDANT.**

ANDERSON COUNTY ET AL.

vs.

No. 6415.

INTERNATIONAL & GREAT NORTHERN RAIL-  
WAY COMPANY.

Filed Jan. 15, 1914.

In the District Court of Cherokee County, Texas.

If the court refuses special charge No. 1, requested by defendant, the defendant requests the Court to submit to the jury the following Special Issue in addition to all those submitted in the Charge:

Question No. : Did the International & Great Northern Railway Company commit a breach of the contract or contracts by which it is claimed it was bound to keep its general offices, machine shops and round houses at Palestine by removing its general offices from Palestine in 1881, and thereafter keeping them elsewhere until 1888?  
Answer "Yes" or "No."

In connection with this question, you are instructed that if you find from a preponderance of the evidence that the books and records, except the Minute Book and Stock books, all of the general officers, except two or three, and all the clerks and employees employed and kept in and about the general offices, were moved and kept away, as inquired about in the above question, you will answer yes, otherwise, you will answer "No."

ANDREWS, BALL & STREETMAN,  
N. A. STEDMAN,  
F. A. WILLIAMS,  
WILSON, DABNEY & KING,  
N. B. NORRIS,  
NORMAN & SHOOK,  
F. A. GUINN,  
W. E. DONLEY,

*Attys. for Defendant.*

Presented and refused before charge of Court was read to jury, this Jany. 15th, 1914.

A. E. DAVIS,  
*Judge 1st Judicial District, Presiding.*

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**SPECIAL ISSUE NO. 10, REQUESTED BY  
DEFENDANT.**

ANDERSON COUNTY ET AL.

vs.

No. 6415.

INTERNATIONAL & GREAT NORTHERN RAIL-  
WAY COMPANY.

Filed Jan. 15, 1914.

In the District Court of Cherokee County, Texas.

If the Court refuses special charge No. 1, requested by defendant, the defendant requests the Court to submit

to the jury the following Special Issue in addition to all those submitted in the Charge:

Question No. : Did the International & Great Northern Railway Company commit a breach of the contract or contracts by which it is claimed it was bound to keep its general offices, machine shops and round houses at Palestine by removing its general offices from Palestine in 1881, and thereafter keeping them elsewhere until 1888?

Answer "Yes" or "No."

In connection with this question, you are instructed that if you find from a preponderance of the evidence that the books and records, except the Minute Books and Stock books, all of the general officers, except two or three, and all the clerks and employees employed and kept in about the general offices, were moved and kept away, as inquired about in the above question, you will answer yes, otherwise, you will answer "No."

F. A. WILLIAMS,  
N. A. STEDMAN,  
ANDREWS, BALL & STREETMAN,  
F. B. GUINN,  
W. E. DONLEY,  
N. B. NORRIS,  
WILSON, DABNEY & KING,  
*Attys. for Defendant.*

Presented and refused before the reading of the charge of the Court to the jury, this Jany. 15th, 1914.

A. E. DAVIS,  
*Judge 1st Judicial District, Presiding.*

**SPECIAL CHARGE NO. 1, REQUESTED BY DEFENDANT IN CONNECTION WITH QUESTION NO. ONE.**

ANDERSON COUNTY ET AL.

vs.

No. 6415.

INTERNATIONAL & GREAT NORTHERN RAILWAY COMPANY.

Filed Jan. 15, 1914.

In the District Court of Cherokee County, Texas.

Should the Court refuse to give Special Charges Nos. one and two, asked by the defendant, and also refuse to submit Questions Nos. One to Four, requested in lieu of Question One submitted in the Charge of the Court, and the instructions in connection with said Questions Nos. one to four, but should submit Question No. One stated in the Charge handed by the Court to counsel for defendant, defendant asks the Court to give, in connection with such Question, the following special instructions, each of which is separately requested:

Special Charge No. 1 in connection with Question No. One:

The defendant requests the Court to give the following Special Charge in connection with question No. one submitted in its charge to the jury:

In determining whether or not Reagan and Grow "contracted," as stated in this question, you are instructed that, in order to answer "yes," you must find that Grow intended then to make a contract, binding on the Railroad Company, to do what was promised by him, and Reagan then intended to make a contract binding on himself and the citizens of Palestine, to do what he promised for himself and them. Mere conversations or negotiations between Grow and Reagan for the starting of proceedings for, and for carrying an election in the County to authorize the issuance of bonds of the County, with no purpose on the part of Reagan and Grow at that time to bind themselves by a contract separate from that intended



to be made afterwards between the Railroad Company and the County, through such election, would not constitute a contract, and if you find the facts as just supposed, you will answer "no" to question No. One.

F. A. WILLIAMS,  
N. A. STEDMAN,  
WILSON, DABNEY & KING,  
ANDREWS, BALL & STREETMAN,  
NORMAN & SHOOK & GIBSON,  
GUINN,  
W. E. DONLEY,

*Attys. for Defendant.*

Presented and refused before reading of Court's charge to jury this Jany. 15th, 1914.

A. E. DAVIS,

*Judge 1st Judicial District, Presiding.*

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**SPECIAL CHARGE NO. 2, REQUESTED BY DEFENDANT IN CONNECTION WITH QUESTION NO. 1.**

ANDERSON COUNTY ET AL.

vs.

No. 6415.

INTERNATIONAL & GREAT NORTHERN RAILWAY COMPANY.

Filed Jan. 15, 1914.

You are instructed that in order to answer "yes" to question No. One, you must find that in what took place between Reagan and Grow, the former was representing interests of the citizens of Palestine, as distinct and separate from his and their interests as citizens of the County. If, in what took place between Reagan and Grow the former was merely acting as a citizen of the County, or if he and other citizens of Palestine were acting together as a part of the citizens of the County, and not in the promo-

tion of the interest of the citizens of Palestine, independent of their interest as citizens of the County, you will answer "no."

WILSON, DABNEY & KING,  
ANDREWS, BALL & STREETMAN,  
N. A. STEDMAN,  
NORMAN & SHOOK & GIBSON,  
N. B. MORRIS,  
GUINN,  
W. E. DONLEY,  
F. A. WILLIAMS,

*Attys. for Defendant.*

Presented and refused before charge of Court was read to jury, this Jany. 15th, 1914.

A. E. DAVIS,  
*Judge 1st Judicial District, Presiding.*

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**SPECIAL CHARGE NO 3, REQUESTED BY DEFENDANT IN CONNECTION WITH QUESTION NO. ONE.**

ANDERSON COUNTY ET AL.

vs.

No. 6415.

INTERNATIONAL & GREAT NORTHERN RAILWAY COMPANY.

Filed Jan. 15, 1914.

In order to answer "yes" to question No. One, you must find that Reagan was made by the citizens of Palestine their representative to represent some interest of their own, separate from or in addition to such interest as they had as citizens of the County, in securing a contract with Grow for their own benefit; no mere action or agreement by Reagan as a citizen of the County, and for

the benefit of the entire County, would authorize you to answer "yes" to question No. One.

WILSON, DABNEY & KING,  
ANDREWS, BALL & STREETMAN,  
NORMAN & SHOOK & GIBSON,  
GUINN,  
W. E. DONLEY,  
N. A. STEDMAN,  
N. B. MORRIS,  
F. A. WILLIAMS,

*Attys. for Defendant.*

Presented and refused before reading of charge of Court to jury, this Jany. 15th, 1914.

A. E. DAVIS,  
*Judge 1st Judicial District, Presiding.*

**SPECIAL CHARGE NO. 4, REQUESTED BY DEFENDANT IN CONNECTION WITH QUESTION NO. ONE.**

ANDERSON COUNTY ET AL.

vs.

No. 6415.

INTERNATIONAL & GREAT NORTHERN RAILWAY COMPANY.

Filed Jan. 15, 1914.

The burden is on the plaintiffs to prove by a preponderance of the evidence each fact above made essential to enable you to answer "yes" to question No. One.

WILSON, DABNEY & KING,  
ANDREWS, BALL & STREETMAN,  
N. A. STEDMAN,  
NORMAN & SHOOK & GIBSON,  
GUINN,  
W. E. DONLEY,  
F. A. WILLIAMS,

*Attys. for Defendant.*

Presented and refused before charge of Court read to the jury, this Jany. 15, 1914.

A. E. DAVIS,  
*Judge 1st Judicial District, Presiding.*

**SPECIAL CHARGE NO. 1, REQUESTED BY DEFENDANT IN CONNECTION WITH QUESTION NO. 2.**

ANDERSON COUNTY ET AL.

vs.

No. 6415.

INTERNATIONAL & GREAT NORTHERN RAILWAY COMPANY.

Filed Jan. 15, 1914.

In case the Court should refuse Special instruction No. One, requested by defendant, peremptorily instructing a verdict for the defendant, and special charge No. 2, concerning the Reagan-Grow contract, and submit Question No. Two, as stated in the charge submitted by the Court to counsel for defendant, the defendant requests the Court to give the following special instructions in connection with Question No. Two:

You cannot answer "yes" to question No. Two unless it is shown by a preponderance of the evidence that the establishing and keeping of the offices, shops and round houses at Palestine was done because of the alleged agreement or agreements. The Railroad Company, without any contract, had the right to establish and maintain their offices, shops, &c., at Palestine, and the mere fact that it did so is not, by itself, evidence that it was done in part performance of any contract.

WILSON, DABNEY & KING,  
ANDREWS, BALL & STREETMAN,  
N. A. STEDMAN,  
W. E. DONLEY,  
N. B. MORRIS,  
NORMAN, SHOOK & GIBSON,  
GUINN,  
F. A. WILLIAMS,

Presented and refused before charge of Court was read to jury, this Jan. 15th, 1914.

A. E. DAVIS,  
*Judge 1st Judicial District, Presiding.*

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**SPECIAL CHARGE NO. 1, REQUESTED BY DEFEND-  
ANT IN CONNECTION WITH QUESTION NO. 3.**

ANDERSON COUNTY ET AL.

vs.

No. 6415.

INTERNATIONAL & GREAT NORTHERN RAIL-  
WAY COMPANY.

Filed Jan. 15, 1914.

Should the Court refuse Special Charge No. One asked by the defendant, directing a verdict for defendant, and special charge No. 2, concerning the Reagan-Grow contract, and submit question No. Three as stated in charge of the Court submitted to counsel for defendant, defendant requests the following special charge No. Two in connection with Question No. Three:

But to grant authority, or to ratify the making of such a contract by Grow, the Board of directors must have acted, when assembled as a body, and officially. The individual directors when not so assembled and acting, could not bind the Company by anything they might say or do or omit to say or do.

ANDREWS, BALL & STREETMAN,  
WILSON, DABNEY & KING,  
N. A. STEDMAN,  
N. B. MORRIS,  
GUINN,  
NORMAN, SHOOK & GIBSON,  
W. E. DONLEY,  
F. A. WILLIAMS,

*Attys. for Defendant.*

Presented and refused before charge of Court read to jury, Jany. 15th, 1914.

A. E. DAVIS,  
*Judge Presiding.*

**SPECIAL CHARGE NO. 2, REQUESTED BY DEFENDANT IN CONNECTION WITH QUESTION NO. 3.**

ANDERSON COUNTY ET AL.

vs.

No. 6415.

INTERNATIONAL & GREAT NORTHERN RAILWAY COMPANY.

Filed Jan. 15, 1914.

Should the Court refuse defendant's Special Charge No. One, directing a verdict for the defendant, and special charge No. 2, concerning the Reagan-Grow contract, and should submit Question No. Three stated in the charge handed to counsel for defendant by the Court, the defendant requests the following charge Number 2 in connection with Question No. Three:

The burden is on the plaintiffs to prove affirmatively by a preponderance of the evidence, authority from the Houston & Great Northern Railroad Company to Grow to make the contract referred to for it, or ratification of his action in making such contract, if he did so, and unless one of these facts has been so proved you will answer "no" to question No. Three.

ANDREWS, BALL & STREETMAN,  
WILSON, DABNEY & KING,  
N. A. STEDMAN,  
NORMAN, SHOOK & GIBSON,  
N. B. MORRIS,  
GUINN,  
W. E. DONLEY,  
F. A. WILLIAMS,

*Attys. for Defendant.*

Presented and refused before charge of Court read to jury, this Jany. 15, 1914

A. E. DAVIS,  
*Judge 1st Judicial District, Presiding.*

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**SPECIAL CHARGE NO. 3, REQUESTED BY DEFENDANT IN CONNECTION WITH QUESTION NO. 3.**

ANDERSON COUNTY ET AL.

vs.

No. 6415.

INTERNATIONAL & GREAT NORTHERN RAILWAY COMPANY.

Filed Jan. 15, 1914.

Should the Court refuse Special Charge No. One, directing a verdict for defendant, and Special Charge No. Two, concerning the Reagan-Grow contract, and submit Question No. Three stated in the charge handed to counsel for defendant, by the Court, the defendant requests the following Special Charge No. Three in connection with said Question No. Three:

Neither Grow nor any other officer of any of these railroad companies could, by his own actions, ratify Grow's actions in making any contract he is alleged to have made, nor would any action of the Board of Directors amount to ratification of such contract unless it was known to them before or at the time they may have acted, if they ever did act.

The contract, as finally made, between the Houston & Great Northern Railroad Company and Anderson County, did not require the Company to locate and maintain its general offices, machine shops and round houses at Palestine, and the acceptance and keeping of the bonds and their proceeds by the Company would not constitute a ratification of Grow's action in making the contract with



Reagan and the citizens of Palestine, if Grow made such contract.

The Houston & Great Northern Railroad Company and the International & Great Northern Railroad Company had the right to establish and maintain their general offices, machine shops and round houses at Palestine without any contract, and the fact that they did so would not be, in itself, a ratification of any contract to so locate and maintain them there.

ANDREWS, BALL & STREETMAN,  
WILSON, DABNEY & KING,  
NORMAN, SHOOK & GIBSON,  
W. E. DONLEY,  
N. B. MORRIS,  
N. A. STEDMAN,  
GUINN,

*Attys. for Defendant.*

Presented and refused before charge of Court read to jury, Jany. 15th, 1914.

A. E. DAVIS,  
*Judge Presiding.*

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**SPECIAL CHARGE NO. 1, REQUESTED BY DEFENDANT IN CONNECTION WITH QUESTIONS 4, 5 AND 6.**

ANDERSON COUNTY ET AL.

vs.

No. 6415.

INTERNATIONAL & GREAT NORTHERN RAILWAY COMPANY.

Filed Jan. 15, 1914.

In the District Court of Cherokee County, Texas.

Should the Court refuse defendant's requested Special Charge No. One, directing a verdict for defendant, and also refuse defendant's requested charge No. Four, con-

cerning the so-called Rent House Contract, the defendant requests the Court to give the following Special Charges in connection with Questions Nos. Four, Five and Six stated in the Charge submitted by the Court to defendant's counsel:

You are further instructed that authority to Hoxie or Hayes or other officer to make a contract binding the International & Great Northern Railway Company to locate and forever maintain its offices, shops, etc., at Palestine, must have been given by the Board of Directors as above instructed with reference to Grow. Neither Hoxie nor Hayes nor other officer could ratify such a contract made either by himself or by another officer without such authority.

Likewise, ratification of such a contract, if a contract was made without authority, must have been made by the Board of Directors as above instructed with reference to Grow; and to constitute a ratification by the Board, the action taken by it and claimed to be such ratification, must have been taken with knowledge by the Board of the existence of the contract. Moving the offices, shops, etc., to Palestine, and occupancy by officers and employees of houses furnished by the citizens would not constitute ratification by the Company of the alleged contract with reference to such houses, unless such action was taken with knowledge on the part of the Board that such contract had been made, and unless such moving and occupancy were done in recognition of the contract.

F. A. WILLIAMS,  
N. A. STEDMAN,  
ANDREWS, BALL & STREETMAN,  
F. B. GUINN,  
W. E. DONLEY,  
NORMAN & SHOOK,  
N. B. MORRIS,  
WILSON, DABNEY & KING,  
*Attys. for Defendant.*

~~Presented on this the 15th day of Jany., A. D. 1914,  
before the charge was read to the jury, and refused, to  
which defendant excepted.~~

~~A. E. DAVIS,  
Judge Presiding.~~

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**CHARGE REQUESTED BY DEFENDANT.**

ANDERSON CO. ET AL.

vs.

No. 6415.

I. & G. N. R'Y CO.

Filed Jan. 15, 1914.

In the District Court of Cherokee County, Texas.

Should the Court refuse defendant's Special Charge No. One, directing a verdict for the defendant, and special charge No. 2, concerning the Reagan-Grow contract, and should submit Question No. Three stated in the charge handed to counsel for defendant by the Court, the defendant requests the following charge in connection with Question No. Three:

The burden is on the plaintiffs to prove affirmatively, by a preponderance of the evidence, authority from the Houston & Great Northern Railroad Company to Grow to make the contract referred to for it, or ratification of his action in making such contract, if he did so, and unless one of these facts has been so proved you will answer "no" to question No. Three.

Given.

A. E. DAVIS,  
Judge Presiding.

**CHARGE REQUESTED BY DEFENDANT.**

ANDERSON CO. ET AL.

vs.

No. 6415.

I. &amp; G. N. R'Y CO.

Filed Jan. 15, 1914.

In the District Court of Cherokee County, Texas.

Should the court refuse defendant's requested Special Charge No. One, directing a verdict for defendant, and also refuse defendant's requested charge No. Four, concerning the so-called Rent House Contract, the defendant requests the Court to give the following Special Charges in connection with Questions Nos. Four, Five and Six stated in the Charge submitted by the Court to defendant's counsel.

You are further instructed that authority to Hoxie or Hayes or other officer to make a contract binding the International & Great Northern Railway Company to locate and forever maintain its offices, shops, etc., at Palestine, must have been given by the Board of Directors as above instructed with reference to Grow. Neither Hoxie nor Hayes nor other officer could ratify such a contract made either by himself or by another officer without such authority.

Likewise, ratification of such a contract, if a contract was made without authority, must have been made by the Board of Directors as above instructed with reference to Grow; and to constitute a ratification by the Board, the action taken by it and claimed to be such ratification, must have been taken with knowledge by the Board of the existence of the contract. Moving the offices, shops, etc., to Palestine, and occupancy by officers and employees of houses furnished by the citizens would not constitute ratification by the Company of the alleged contract with reference to such houses, unless such action was taken with knowledge on the part of the Board that such con-

tract had been made, and unless such moving and occupancy were done in recognition of the contract.

Given.

A. E. DAVIS,  
*Judge Presiding.*

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**CHARGE OF THE COURT NO. 2.**

ANDERSON CO. ET AL.

vs.

No. 6415.

I. & G. N. R'Y CO.

Filed Jan. 15, 1914.

In District Court of Cherokee County, Texas.

In response to, and in lieu of, the instructions requested by defendant, the court charges you as follows:

Gentlemen of the Jury:

You are instructed that the record of the election proceedings in which the voters of Anderson County voted in favor of the issuance of bonds in the sum of one hundred and fifty thousand dollars to the Houston & Great Northern Railroad Company and of the action thereon taken by the 'Commissioners' Court, is the exclusive evidence of the contract between the County of Anderson and that Railroad Company, and you are further instructed that the declarations or promises alleged to have been made by Grow, or others, during the canvass preceding that election, or afterwards, when the bonds were issued and delivered to Grow, concerning the location of general offices, round houses and machine shops, constituted no contract with the County of Anderson, and such promises of Grow, if any, can only be considered by you in connection with all other evidence in determining whether the contract alleged to have been made by

Grow with Reagan, acting for the citizens of Palestine (if he did so act), had in fact theretofore been made.

Given.

A. E. DAVIS,  
*Judge Presiding.*

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**CHARGE OF THE COURT NO. 3.**

ANDERSON CO. ET AL.

vs.

No. 6415.

I. & G. N. R'Y CO.

Filed Jan. 15, 1914.

In the District Court of Cherokee County, Texas.

In response to and in lieu of instructions requested by defendant, the Court charges the jury:

You cannot answer "yes" to question No. Two unless it is shown by a preponderance of the evidence that the establishing and keeping of the offices, shops and round houses at Palestine was done because of the alleged agreement or agreements.

The Houston & Great Northern Railroad Company and the International & Great Northern Railroad Company had the right to establish and maintain their general offices, machine shops and round houses at Palestine without any contract, and the fact that they did so would not be, in itself, a ratification of any contract to so locate and maintain them there.

But if you find that such agreement or agreements had been made, then you may consider the establishment and maintenance of the shops and offices at Palestine, along with all other evidence in the case in determining whether or not the company knowingly acquiesced in or ratified such agreement or agreements, if any were made.

Given.

A. E. DAVIS,  
*Judge Presiding.*

**CHARGE OF THE COURT NO. 4.**

ANDERSON CO. ET AL.

vs.

No. 6415.

I. &amp; G. N. R'Y CO.

Filed Jan. 15, 1914.

In the District Court of Cherokee County, Texas.

Special Charge in connection with Question No. One:

In order to answer "yes" to question No. One, you must find that Reagan was made by the citizens of Palestine their representative to represent them in making a contract, if any, between them and the Houston and Great Northern Railroad Company, which contract, if any, was more comprehensive than that sought from Anderson County, and was intended by all parties to be of especial benefit to the citizens of Palestine.

Given.

A. E. DAVIS,  
*Judge Presiding.*

**CHARGE OF THE COURT NO. 5.**

ANDERSON CO. ET AL.

vs.

No. 6415.

I. &amp; G. N. R'Y CO.

Filed Jan. 15, 1914.

In the District Court of Cherokee County, Texas.

In response to and in lieu of special charges requested by the defendant, the court charges you as follows:

Special Charge in connection with Question No. One:

In determining whether or not Reagan and Grow "contracted," as stated in this question, you are instructed that in order to answer "yes" you must find that Grow intended or purposely induced Reagan to believe that he intended then to make a contract binding on the Railroad Company to do what was promised by him, and



Reagan then intended to make a contract binding on himself and the citizens of Palestine, to do what he promised for himself and them. Mere conversations or negotiations between Grow and Reagan for the starting of proceedings for and for carrying an election in the County to authorize the issuance of bonds of the County, with no purpose on the part of Reagan and Grow at that time to bind themselves by a contract separate from that intended to be made afterwards between the Railroad Company and the County, through such election, would not constitute a contract, and if you find the facts as just supposed you will answer "no" to question No. One.

Given.

A. E. DAVIS,  
*Judge Presiding.*

### CHARGE OF THE COURT NO. 6.

ANDERSON CO. ET AL.

vs.

No. 6415.

I. & G. N. R'Y CO.

Filed Jan. 15, 1914.

In the District Court of Cherokee County, Texas.

In addition to the other questions propounded to you, you will answer the following:

Question No. 7:

Do you find from a preponderance of the evidence that in the event that the International & Great Northern Railway Company should be required to keep and maintain its shops at Palestine, Texas, forever, no burden or injurious effect would thereby be placed upon or suffered by, Interstate Commerce?

Answer "Yes," or "No."

Given.

A. E. DAVIS,  
*Judge Presiding.*

**CHARGE OF THE COURT NO. 7.**

ANDERSON CO. ET AL.

vs.

No. 6415.

I. &amp; G. N. R'Y.

Filed Jan. 15, 1914.

In District Court of Cherokee County, Texas.

In response to and in lieu of instructions requested by defendant, the Court charges the jury:

Neither Grow nor any other officer of any of these railroad companies could by his own actions, ratify Grow's actions in making any contract he is alleged to have made, nor would any action of the Board of Directors amount to ratification of such contract unless it was known to them before or at the time they may have acted, if they ever did act.

The contract, as finally made, between the Houston & Great Northern Railroad Company and Anderson County did not require the Company to locate and maintain its general offices, machine shops and round houses at Palestine, and the acceptance and keeping of the bonds and their proceeds by the Company would not alone constitute a ratification of Grow's action in making the contract with Reagan and the citizens of Palestine, if Grow made such contract.

Given.

A. E. DAVIS,  
*Judge Presiding.*

**OBJECTIONS OF DEFENDANT TO COURT'S  
CHARGES 2, 3, 4, 5 AND 7.**

ANDERSON CO. ET AL.

vs.

I. &amp; G. N. R'Y CO.

Filed Jan. 15, 1914.

Now, before charges of the court are read to the jury,

and before argument, the defendant's counsel comes and objects and excepts to certain parts of the special instructions given, and in addition to the issues first submitted by the court, as follows:

To the following language in special instruction No. two given in response and in lieu of special instruction requested by the defendant, such language being "And such promises of Grow, if any, can only be considered by you in connection with all other evidence in determining whether the contract alleged to have been made by Grow with Reagan, acting for the citizens of Palestine, if he did so act, had in fact theretofore been made"; such objection being that the promises of Grow referred to were not proper evidence of the existence of a previous contract, and because that part of the charge comments and is upon the weight of the evidence.

SECOND: To special charge No. four, in connection with question No. One; the objection thereto being because of the refusal of the court to give in charge the charge requested by defendant upon the same subject, and further, for the reason that the charge as given does not state the correct rule, and does not fully express the law on the subject as did the charge requested by defendant.

THIRD: To the concluding sentence of special charge No. three, given in response and in lieu of special instruction requested by the defendant, which sentence is as follows: "But if you find that such agreement had been made, then you may consider the establishment and maintenance of the shops and offices at Palestine, along with all other evidence in the case, in determining whether or not the company knowingly acquiesced in or ratified such agreement or agreements, if any were made"; the objection being that there is no other evidence of ratification or of knowledge on the part of the defendant of the alleged contract and the establishment and maintenance

of the shops is no evidence of ratification or of knowledge of the existence of the contract.

FOURTH: To the insertion in special charge No. Five, given in response and in lieu of special charge requested by defendant, of the words "or purposely induced Reagan to believe"; the objection being that there is no evidence of such purpose on the part of Grow.

FIFTH: To the insertion in special charge No. Seven, given in response and in lieu of special charge requested by defendant, or the word "alone" in the last clause of such charge; the objection being that the word thus used implies that there had been other evidence along with which the acceptance of the bonds might be considered evidence of ratification.

ANDREWS, BALL & STREETMAN,  
N. A. STEDMAN,  
F. A. WILLIAMS,  
WILSON, DABNEY & KING,  
*Attys. for Defendant.*

#### DEFENDANT'S BILL OF EXCEPTIONS NO. 40.

ANDERSON CO. ET AL.

vs.

No. 6415.

I. & G. N. R'Y CO.

Filed Mar. 18, 1914.

In the District Court of Cherokee County, Texas.

Be it remembered that upon the trial of the above entitled cause, and before the charges of the court were read to the jury, the defendant's counsel objected and excepted to certain parts of special instructions given, and in addition to the issues first submitted by the court, as follows:

To the following language in special instruction No. two given in response and in lieu of special instruction

requested by the defendant, such language being "And such promises of Grow, if any, can only be considered by you in connection with all other evidence in determining whether the contract alleged to have been made by Grow with Reagan, acting for the citizens of Palestine, if he did so act, had in fact theretofore been made"; such objection being that the promises of Grow referred to were not proper evidence of the existence of a previous contract, and because that part of the charge comments and is upon the weight of the evidence.

**SECOND:** To special charge No. four, in connection with question No. One; the objection thereto being because of the refusal of the court to give in charge the charge requested by defendant upon the same subject, and further, for the reason that the charge as given does not state the correct rule, and does not fully express the law on the subject, as did the charge requested by defendant.

**THIRD:** To the concluding sentence of special charge No. three, given in response and in lieu of special instruction requested by the defendant, which sentence is as follows: "But if you find that such agreement had been made, then you may consider the establishment and maintenance of the shops and offices at Palestine, along with all other evidence in the case, in determining whether or not the company knowingly acquiesced in or ratified such agreement or agreements, if any were made"; the objection being that there is no other evidence of ratification or of knowledge on the part of the defendant of the alleged contract and the establishment and maintenance of the shops is no evidence of ratification or of knowledge of the existence of the contract.

**FOURTH:** To the insertion in special charge No. Five, given in response and in lieu of special charge requested by defendant, of the words "or purposely induced Reagan to believe"; the objection being that there is no evidence of such purpose on the part of Grow.

FIFTH: To the insertion in special charge No. Seven, given in response and in lieu of special charge requested by defendant, of the word "Alone" in the last clause of such charge; the objection being that the word thus used implies that there had been other evidence along with which the acceptance of the bonds might be considered evidence of ratification.

And defendant now tenders to the court this his bill of exceptions No. 40, and asks that it be approved and filed and made a part of the record in this cause.

ANDREWS, BALL & STREETMAN,  
F. A. WILLIAMS,  
N. A. STEDMAN,  
WILSON, DABNEY & KING,  
*Attys. for Defendant.*

Approved:

T. B. GREENWOOD,  
*Atty for Plffs.*

This Bill No. 40 was this day presented to me, and being agreed to, is in all things approved this March 17th, 1914.

A. E. DAVIS,  
*Judge.*

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#### DEFENDANT'S BILL NO. 41.

ANDERSON COUNTY ET AL.

vs. No. 6415.

I. & G. N. RAILWAY COMPANY.

Filed Mar. 18, 1914.

(1) Be it remembered that upon the trial of the above described case, the evidence being closed, and all parties having rested, and before the argument of the case was begun, the court submitted to the respective parties and their attorneys, for inspection, the charge which he pro-

posed to give in the case, submitting the case upon special issues; whereupon came the defendant and presented its objections in writing thereto, and in these objections the defendant stated that a peremptory charge should be given for it, and that it would submit such peremptory charge for it, which was then and there submitted to the court; whereupon the court overruled all of said objections, and to the action of the court in overruling these objections filed herein January 15th, 1914, the defendant excepted.

(2) And be it further remembered that, in pursuance of the above, the defendant presented next its special charge No. 1, requesting the court to charge peremptorily for the defendant as follows: "You are instructed to return a verdict for the defendant," which instruction the court then refused to give, endorsing its refusal on the requested charge, to which refusal of the court the defendant then and there excepted.

(3) The above action having been taken by the court, the defendant presented to the court Special Charge 2, which Special Charge 2 directed the jury not to consider the alleged agreement between Grow and Reagan alleged to have been made in March, 1872, and the court refused to give such special charge, and endorsed his refusal thereon; whereupon the defendant excepted to such action of the court.

(4) And the court having ruled as set out above, the defendant, subject thereto, requested the court to give Special Charge No. 3, which the court refused, and endorsed his refusal thereon, to which action of the court the defendant excepted.

(5) And the court having ruled as set out above, and subject to the same, the defendant requested the court to give its Special Charge No. 4, which the court refused, and endorsed his refusal thereon; whereupon the defendant excepted to such refusal.

(6) The court having taken the above action, and



made the ruling stated, the defendant requested the court to submit in lieu of Question 1 stated in the charge submitted by the court certain questions or special issues numbered 1, 2, 3 and 4, with a certain instruction attached thereto, all as appears in the request to submit special issues 1, 2, 3 and 4, requested by the defendant, which request having been submitted to the court, were by him by endorsement thereon refused; whereupon the defendant excepted to this refusal of these requests.

(7) The court having made the above rulings, the defendant presented to the court its request to submit the special issue numbered by it No. 5, which special issue the court refused and overruled by endorsement thereon. Whereupon, the defendant excepted to this ruling.

(8) The court having made the above rulings, the defendant presented to the court special issue No. 6, which special issue No. 6 as formulated by the defendant the court refused to give and overruled; whereupon, the defendant excepted to this action of the court.

(9) The court having made the above ruling, the defendant submitted to the court Special Issue No. 7, requested by it, and the court endorsed his refusal thereon to give the same, and to the refusal of the court to submit this issue as requested, the defendant then excepted.

(10) The Court having ruled as above, the defendant requested the court to submit to the jury Special Issue No. 8, requested by it, and the court refused to submit such Special Issue and endorsed thereon his refusal, and the defendant then excepted to the action of the court in refusing to submit such Special Issue.

(11) The court having ruled as above, the defendant presented to the court Special Issue No. 9 prepared by it, and requested the court to submit the same to the jury; whereupon, the court refused to submit this Special Issue so requested, and endorsed his refusal thereon, to which action of the court the defendant then excepted.

(12) The Court having ruled as above, the defendant presented to the court Special Issue requested by it No. 10, requested in the event that the court refused to charge peremptorily for the defendant, and the court refused to submit this Special Issue No. 10, and endorsed his refusal thereon; whereupon, the defendant excepted to such action of the court.

(13) The court having ruled as above, the defendant requested the court to charge the jury in connection with Question No. 1 contained in the charge submitted by the court, as requested in Special Charge No. 1, requested by the defendant in connection with Charge 1, defendant asked the court to give this charge, which the court refused, and endorsed his refusal thereon; whereupon the defendant excepted to such refusal.

(14) The defendant next presented to the court Special Charge 2, in connection with Question 1, and after the court had ruled as above, that is, this Special Charge was requested only after the court had made all of the rulings set out above; whereupon, the court refused to give Special Charge 2 requested in connection with Question 1, and endorsed his refusal thereon, to which action of the court the defendant then excepted to such refusal.

(15) The Court having ruled as above, the defendant presented to the court Special Charge 3, in connection with Question 1, contained in the charge submitted by the court, and requested the court to give the same, which Special Charge No. 3, in connection with Question 1 so requested, the court refused and endorsed his refusal thereon; whereupon the defendant excepted to this action of the court.

(16) The Court having ruled as set out above, the defendant requested the court to give Special Charge No. 4, in connection with Question 1, contained in the General Charge submitted by the court; whereupon the court refused to give this charge, and endorsed his refusal there-

on, and the defendant excepted to this action of the court.

(17) The court having ruled as set out above, the defendant next in order presented to the court its Special Charge No. 1, in connection with Question No. 2 in the charge submitted by the court, and requested the court to give the same; whereupon, the court refused to give the same, and endorsed his refusal thereon, and thereupon, the defendant excepted to such refusal.

(18) The defendant next presented to the court, after the court had ruled as set out above, its Special Charge No. 1, in connection with Question 3 in the court's charge submitted by him, and requested the court to submit the same, whereupon the court refused to submit such charge and endorsed his refusal thereon, and thereupon the defendant excepted to such action of the court.

(19) The defendant next presented to the court, after he had made all of the rulings set out above, Special Charge No. 2, in connection with Question 3 in the Charge submitted by the court, and requested the court to submit the same; whereupon the court refused and endorsed his refusal thereon, and the defendant thereupon excepted to such action of the court.

(20) The court having made all of the rulings set out above, the defendant presented to him Special Charge No. 3, in connection with Question 3 of the Charge submitted by the court; whereupon the court refused to give such charge, and endorsed his refusal thereon, and the defendant thereupon excepted to such action of the court.

(21) The court having made all of the rulings set out above the defendant presented to the court Special Charge No. 1 requested by it in connection with Questions 4, 5 and 6 in the charge submitted by the court, which Special Charge was refused by the court, and he endorsed his refusal thereon, to which action of the court in refusing the same the defendant thereupon excepted.

(22) The defendant presented to the court Charges

marked "A" and "B," the court having taken the action set out above, Charge "A" being in connection with Question No. 3 submitted by the court in his charge, and conditionally requested as appears therein, and Charge "B" being in connection with Questions 4, 5 and 6 in the charge submitted by the court, and being conditionally requested as appears therein, and the court accepted these charges.

(23) The court next submitted to the counsel for the plaintiffs and the defendant additional charges, which he submitted for their consideration, and which are numbered Court's Charges 2, 3, 4, 5, 6 and 7; whereupon, the defendant objected to such charges, stating its objections in writing, and exceptions thereto, to wit: To No. 2 and to No. 4, to No. 3, to No. 5 and to No. 7 as in the exceptions and objections duly shown; which objections were in writing.

And these objections being each considered by the court, were each by him overruled, and to the court's action in overruling each of these objections the defendant then excepted.

(24) The various requests for instructions, and the various instructions which the court refused, as set out above, and which he decided to give, were all duly filed on the 15th of January, 1914, and the various objections of defendant were made in writing and then filed, and all of the above proceedings were had in open court before the argument of the case, and after the conclusion of the evidence; and thereafter the case was argued; whereupon, the court having previously settled the charges as set out above, over the objections of the defendant as hereinabove set out, read to the jury the charge of the court submitted by the court numbered Charge of the Court No. 1, and also Charges "A" and "B" requested by the defendant, and the charges 2, 3, 4, 5, 6 and 7 mentioned above as charges of the Court, and these were the charges by which the jury were in-

structed. All of the Charges mentioned above were submitted by the Court to the counsel for all of the parties in this case, before the court ruled thereon, and the charges requested by the defendant were each submitted to the counsel for the opposing parties before the court ruled thereon; and counsel for all parties had a reasonable opportunity to prepare and state their objections and exceptions to all of said charges requested, or given, and to examine the same before the court ruled thereon; and the court received and considered the charges in the order and as stated above.

Wherefore, the defendant presents this its Bill of Exceptions No. 41, in order to preserve the history of these matters, and its rights thereupon, and prays that it may be allowed.

F. A. WILLIAMS,  
N. A. STEDMAN,  
WILSON, DABNEY & KING,  
ANDREWS, BALL & STREETMAN,  
*Attorneys for the Defendant.*

Approved:

T. B. GREENWOOD,  
*Atty for Plffs.*

The foregoing and Agreed Bill of Exceptions No. 41 was this day presented to me, and is by me in all things approved this 17th day of March, 1914.

A. E. DAVIS,  
*Judge.*

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### JUDGMENT.

ANDERSON COUNTY ET AL.

VS.

No. 6415.

I. & G. N. R'y CO.

Filed Jan. 17th, 1914.

Recorded in Vol. "M," pages 191-192-193-194.

On this the 7th day of January, 1914, the above entitled

cause came on to be heard before the Hon. A. E. Davis, Judge of the first Judicial District of Texas, presiding as judge of the District Court of Cherokee County, Texas, he having exchanged districts with the Hon. Lee D. Guinn, Judge of the Second Judicial District of Texas, and holding court at Rusk, instead of the said Hon. Lee D. Guinn, this being deemed expedient by both of said Judges.

And, now on this the 7th day of January, 1914, came on for hearing the plea to the jurisdiction and the plea in abatement contained in defendant's first amended original answer, together with the replication thereto contained in plaintiffs' first supplemental petition, when the plaintiffs and defendant, by their attorneys, agreed that the court should pass upon and determine the issues presented by said plea to the jurisdiction and plea in abatement and said replication, without a jury, and the court, after considering said plea to the jurisdiction and plea in abatement, and the replication thereto, and the evidence thereon, finds that said plea to the jurisdiction and plea in abatement should not be sustained; and, it is therefore ordered and decreed by the court that the plea to the jurisdiction and the plea in abatement contained in defendant's First Amended Original Answer, be and the same are hereby overruled, to which ruling of the court the defendant duly excepted.

And, now on this the 7th day of January, 1914, came on to be heard the general demurrer and the eighteen special exceptions contained in defendant's first amended original answer to plaintiff's first amended original petition, and the court having carefully considered said petition, and said general demurrer and special exceptions, finds that said general demurrer and each and all of said special exceptions should not be sustained, and it is therefore ordered by the court that said general demurrer and each and all of said special exceptions be and the same

are hereby overruled, to which findings and rulings of the court the defendant duly excepted.

And now on this the 8th day of January, 1914, the above entitled and numbered cause was regularly called for trial, when the plaintiffs appeared by their attorneys and announced ready for trial, and the defendant appeared by its attorneys and announced ready for trial, and thereupon came a jury of good and lawful men, to wit: J. M. Meador, foreman, and eleven others, to whom were submitted seven distinct and separate questions, after they had been duly impaneled and sworn, to which questions after hearing the pleadings, evidence, argument of counsel, and instructions of the court, the jury on this the 17th day of January, 1914, returned into open court, on their oaths, seven distinct and separate answers, in writing, duly signed by their foreman, which questions and answers were as follows, to wit:

Question Number One: Do you find from the preponderance of the evidence that the Houston and Great Northern Railroad Company, acting by its President, Gaius A. Grow, on or about the 15th day of March, 1872, contracted and agreed, with the citizens of Palestine, acting by John H. Reagan, to extend its line of railroad to intersect the International Railroad at Palestine, and to establish a depot within a half mile of the Court House at Palestine, and to commence running cars regularly there-to by July 1st, 1873, and to thereupon locate and forever thereafter maintain, the general offices, machine shops and roundhouses of the Houston and Great Northern Railroad, at the City of Palestine, for and in consideration of an agreement (if any), by John H. Reagan to make a thorough canvass of Anderson County, to induce the electors of that County to authorize the issuance of interest bearing bonds of the county in the principal sum of \$150,000, and upon the further consideration that Anderson County, on authorization of its electors, should



issue and deliver its bonds, in the principal sum aforesaid?

Answer to Question Number One:

"Yes."

"Question Number Two:

"Do you find from the preponderance of the evidence that Anderson County, on authorization of its electors, issued and delivered to the Houston & Great Northern Railroad Company its interest bearing bonds in the principal sum of \$150,000, within a year from the date of the contract and agreement mentioned in Question Number One, if you find there was any such contract and agreement; and that Judge John H. Reagan made a thorough canvass of Anderson County to induce the electors to vote said bonds; and that the Houston & Great Northern Railroad Company and the International & Great Northern Railroad Company, in part performance of the contract and agreement mentioned in Question Number One, if you find there was any such contract and agreement, and in compliance with said contract and agreement, if any, established and thereafter maintained at Palestine, the machine shops and round houses of the Houston & Great Northern Railroad and of the International & Great Northern Railroad?"

Answer to Question Number Two:

"Yes."

"Question Number Three:

"Do you find from the preponderance of the evidence that the Houston and Great Northern Railroad Company authorized or ratified the action of Galusha A. Grow in making (if you find that he did make), the contract and agreement mentioned in Question Number One?"

"In determining whether the Railroad Company authorized or ratified the action in its behalf, if any, of Galusha A. Grow, you are instructed that the power to authorize or ratify such action was vested in the Company's board of directors, and your answer to this Question Num-

ber Three should be determined by your finding from the evidence as to whether a board of directors of the company conferred the authority on said Grow to make the contract and agreement (if any), or, knowing of his having exercised such authority (if he did so), approved of his action.

“It is not necessary, in order to bind a railroad company by the action of an assumed agent, that the board of directors should have caused to be spread upon their minutes a formal resolution expressly authorizing or approving the action claimed to have been authorized or ratified, nor is it necessary, in order to bind a railroad company by the action of an assumed agent, that the board of directors should have both authorized and ratified the action of the assumed agent; but it is necessary that such action should be either authorized or ratified by the board of directors.”

Answer to Question Number Three:

“Yes.”

“Question Number Four:

“Do you find from the preponderance of the evidence that about the first of the year 1875 the International and Great Northern Railroad Company, acting by its general superintendent, H. M. Hoxie, contracted and agreed with the citizens of the City of Palestine, among whom were the plaintiffs Geo. A. Wright and J. W. Ozment, to fully and completely perform a previous contract and agreement, if any there was, between the Houston and Great Northern Railroad Company, acting by Galusha A. Grow and the citizens of Palestine, acting by John H. Reagan, by at once locating the general offices of the International and Great Northern Railroad at Palestine, and by thereafter forever keeping and maintaining the general offices, machine shops, and round houses of said International and Great Northern Railroad at Palestine, for and in consideration of certain bonds of Anderson County theretofore issued to the Houston and Great Northern Railroad

Company, and for the further and additional consideration that said citizens should at once construct and complete, or cause to be constructed and completed, at their own cost and expense, any and all houses at Palestine, Texas, which might be demanded by said Company, in accordance with such plans or directions as might be furnished by the Company, through its officers, for occupancy, at reasonable rentals, by employees of said Company and their families, and especially by general officers, their families and clerks?"

Answer to Question Number Four:

"Yes."

"Question Number Five:

"Do you find from the preponderance of the evidence that the citizens of Palestine did, in the early part of the year 1875 and within twelve months from the date of the contract between certain citizens of said City and the International and Great Northern Railroad Company (if such contract there was), construct and complete, or cause to be constructed and completed, at their own cost and expense, certain houses at Palestine, Texas, and that the same, if any, were all the houses which were demanded by the International and Great Northern Railroad Company, and that said houses, if any, were constructed and completed, in accordance with the plans or directions furnished therefor (if any), by said Company, through an officer of same, for occupancy, at reasonable rentals, by the employees of said Company, including general officers, their families and clerks?"

Answer to Question Number Five:

"Yes."

"Question Number Six:

"Do you find from the preponderance of the evidence that the International and Great Northern Railroad Company authorized or ratified the action of H. M. Hoxie in making (if you find he did make), the contract and agree-

ment, of date early in 1875, mentioned in Question Number Four?

“In this connection, you are charged that if you find from the preponderance of the evidence in this case that the International and Great Northern Railroad Company, after its formation by the consolidation of the Houston and Great Northern Railroad Company with the International Railroad Company, and early in the year 1875, did, through its general superintendent, H. M. Hoxie, contract and agree with certain citizens of the City of Palestine, including plaintiffs Wright and Ozment, that in consideration of the bonds theretofore issued to the Houston and Great Northern Railroad Company, and in consideration that the citizens of Palestine should at once construct and complete, or cause to be constructed and completed, at their own cost and expense, such houses at Palestine, as might be demanded by said Company, in accordance with plans or directions to be furnished by the Company, through its officers, for occupancy, at reasonable rentals, by employees of said Company and their families and clerks, the said International and Great Northern Railroad Company, on its part, would at once locate the general offices of said Company at Palestine and forever thereafter keep and maintain the general offices, machine shops and roundhouses of said International and Great Northern Railroad at Palestine, and would thereby fully and completely carry out and perform the contract between the Houston and Great Northern Railroad Company, acting by Galusha A. Grow, and the citizens of Palestine, acting by John H. Reagan (if any such contract there was), and if you further find, from the preponderance of the evidence, that the International and Great Northern Railroad Company had full knowledge of said contract between the citizens of Palestine and the Houston and Great Northern Railroad Company, if any, and of its terms, if any, and of said contract and agreement between certain citizens of Palestine and said gen-

eral superintendent, H. M. Hoxie, if any, and of its terms, if any, and if you further find that in pursuance of said last mentioned contract and agreement, if any, certain citizens of Palestine at once constructed and completed, or caused to be constructed and completed, at their own cost and expense, any and all houses demanded under said contract and agreement (if any), in full compliance with their obligations to said Company under said contract and agreement, if any, to the satisfaction of said Company; and if you further find that the International and Great Northern Railroad Company, acting by its board of directors, in pursuance of said contract and agreement of date early in the year 1875 (if any there was), and with the intention to adopt same (if any), and to perform the obligations imposed by said contract and agreement (if any), on said company, did locate and establish the general offices of the International and Great Northern Railroad at Palestine, then you should answer this Question Number Six with the word 'Yes'; but, if you fail to so find, then you should answer this Question Number Six with the word 'No.' "

Answer to Question Number Six:

"Yes."

"Question Number Seven:

"Do you find from a preponderance of the evidence that in the event that the International and Great Northern Railway Company should be required to keep and maintain its shops at Palestine, Texas, forever, no burden or injurious effect would thereby be placed upon, or suffered by, Interstate Commerce?"

Answer to Question Number Seven:

"Yes."

And, now, on this the 17th day of January, 1914, the court does in all things approve the verdict and findings of the jury, in answer to the questions submitted to them, and it is thereupon considered, ordered, adjudged and

decreed by the court that the plaintiffs Anderson County, City of Palestine, Geo. A. Wright, J. W. Ozment, A. L. Bowers, Jno. R. Hearne, Z. L. Robinson, E. W. Link, R. C. Sewell, Jno. M. Colley and P. H. Hughes, for and on behalf of all citizens of the City of Palestine, do recover judgment against the defendant, International and Great Northern Railway Company, as follows, to-wit:

It is considered, ordered, adjudged and decreed by the court that the defendant International and Great Northern Railway Company shall forever keep and maintain the general offices, machine shops, and round houses, for the operation of the International and Great Northern Railroad, in the City of Palestine, in the County of Anderson, in the State of Texas, where the Houston and Great Northern Railroad Company and the International and Great Northern Railroad Company have contracted and agreed to forever keep same, for valuable considerations received.

It is also considered, ordered, adjudged and decreed by the court that the defendant International and Great Northern Railway Company be and it is hereby perpetually enjoined and restrained from changing the location of the machine shops and round houses of the International and Great Northern Railroad, as operated by defendant, from the City of Palestine, and that the defendant International and Great Northern Railway Company be and it is hereby perpetually enjoined and restrained from keeping or maintaining the general offices of the vice-president and general manager, secretary, treasurer, auditor, general freight agent, traffic manager, general superintendent, general passenger and ticket agent, chief engineer, master of transportation, fuel agent, general claim agent, superintendent of motive power and machinery, and master mechanic, engaged in the operation of the International and Great Northern Railroad, at any other place than the City of Palestine.

It is also adjudged and decreed by the court that the

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and that the verdict of the jury be omitted  
being correctly copied in the judgment.

plaintiffs do have and recover of and from the defendant all costs herein, for which let execution issue.

It is further adjudged and decreed by the court that the officers of court do have and recover of each party hereto all costs incurred by each respectively, for which execution may issue.

To all of which judgment defendant excepted.

A. E. DAVIS,  
*Judge Presiding.*

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**AGREEMENT.**

ANDERSON COUNTY ET AL.

VS.

INTERNATIONAL & GREAT NORTHERN RAIL-  
ROAD COMPANY.

It is hereby agreed that the defendant's First Motion for a New Trial filed January 17th, 1914, be omitted from the record, having been substituted by its amended Motion for a New Trial filed the same day under leave of the court.

A. G. GREENWOOD,  
CAMPBELL, SEWALL & STRICKLAND,  
THOS. B. GREENWOOD,  
JOHN C. BOX,  
R. O. WATKINS,  
JOHN B. GUINN,  
PERKINS & PERKINS,  
*Attorneys for Plaintiffs.*

F. A. WILLIAMS,  
N. A. STEDMAN,  
ANDREWS, BALL & STREETMAN,  
WILSON, DABNEY & KING,  
*Attorney for Defendant.*



**ORDER.**

ANDERSON COUNTY ET AL.

VS.

No. 6415.

INTERNATIONAL & GREAT NORTHERN RAIL-  
WAY COMPANY.

Filed Jan. 17th, 1914.

Recorded in Vol. "M," page 195.

District Court of Cherokee County, January 17th, 1914.

In this case on motion of the defendant, International & Great Northern Railway Company, it is ordered that the defendant have leave to file an amended Motion for the New Trial here now presented in lieu of its original Motion for a New Trial.

A. E. DAVIS,

*Judge of said Court, and sitting in this case.***AMENDED MOTION FOR A NEW TRIAL.**

ANDERSON COUNTY ET AL.

VS.

No. 6415.

INTERNATIONAL & GREAT NORTHERN RAIL-  
WAY COMPANY.

Filed Jan. 17th, 1914.

In the District Court of Cherokee County.

*To the Honorable Judge of said Court, and sitting in this case:*

Now comes the defendant, the International & Great Northern Railway Company, and with leave of the court, presents this its amended motion for a new trial herein, and in support thereof now states and specifies the grounds why this motion should be granted.

**I.**

The Judge of the District Court of Anderson County,

before the venue was changed in this case, erred in maintaining that there was a venue in Anderson County, and in overruling defendant's plea to the venue; all as appears by the defendant's plea to the venue in that connection stated, and Bill of Exception to such action of the court taken.

## II.

The court erred in overruling the plea to the abatement in this suit contained in the defendant's first amended answer and filed January 7th, 1914, on which the trial was held and numbered I. in said answer, it thereby appearing that this court had no jurisdiction, and that the jurisdiction in this case, if any case there was, was in the United States District Court for the Northern District of Texas; all of the facts alleged in such plea to the jurisdiction being completely proved without controversy before the court, and the trial of such issue to the jurisdiction and of the plea in abatement being held before the court by agreement, the jury being waived on this issue by the agreement of the parties.

## III.

The court erred in not sustaining the plea to the jurisdiction contained in Section I. of the amended answer, wherein it was set out that certain proceedings were had and foreclosure in the United States Circuit Court for the Northern District of Texas, and wherein the decree of foreclosure of the second mortgage was recapitulated and alleged and set forth, being the mortgage of 1881 of the International & Great Northern Railroad Company, which was sold out thereunder and bought by Nicodemus under the terms of this decree and proceedings thereunder, and conveyed to the defendant under the terms of this decree, all as completely set out in the plea in abatement, the facts therein plead being shown in evidence without controversy, and whereby it appeared that the United States Circuit Court for the Northern District of Texas, now succeeded by the United States Dis-

trict Court for the Northern District of Texas, and such District Court alone had jurisdiction to try any of the issues involved in this case, having reserved jurisdiction over the same, if any case should exist thereon; wherefore, it appears that this court erred in overruling such plea to the jurisdiction:

(a) Because this court has no jurisdiction, and because the sole jurisdiction of issues tried here and determining this cause is in the United States District Court for the Northern District of Texas.

(b) Because the United States Circuit Court for the Northern District of Texas directly and by implication by its decree in consolidated Cause No. 2501, and set out with the answer, of date May 10th, 1910, reserved jurisdiction to hear and determine this cause, or any such cause as this, upon any of the alleged issues tendered for litigation herein, being questions not disposed of, if they still be open, in the United States Circuit Court, and reserved to such court and its successor, the District Court.

(c) Because the United States District Court of the Northern District of Texas is open to entertain this action of the plaintiffs, if any they have, and if any action can be maintained by them under the terms of such decree of foreclosure.

(d) Because it appears upon the face of the proceedings and the matters proved to have occurred in the United States Court and set out in the plea in abatement, that to further litigate this case in the State Court would invade the jurisdiction and decrees of the United States Court, and that a Federal question is now presented and tendered for litigation, and that the plaintiffs are now attempting in this case, in collision with the decrees of the United States Court set out in the plea in abatement, and with full notice of all those proceedings, to litigate; it being only for that court to determine whether or not this litigation can proceed, and it having reserved

jurisdiction of such litigation as this, by the decree of foreclosure, for itself; and having decreed the properties to be sold, which the defendant has bought, as appears by the plea in abatement, not subject to any such claim growing out of any act of the International & Great Northern Railroad Company or its constituents forming it; unless such case be sustained by the United States Court directing the sale of the property. Furthermore, this defendant has invoked, and does now invoke, not limiting the above, section 709 of the Rev. Stats. of the United States carried into Section 237 of the Acts of Congress of March 3rd, 1911 (36 Stat., 1087), in protection of the title, right, privileges, and immunities, acquired by and under the authority of the decree of foreclosure and proceedings of the U. S. Court and the undertakings of that court, and the lawful reservation of that court of jurisdiction over the matters herein attempted to be litigated to the exclusion of every other court.

Wherefore, upon all of the above the court erred in overruling such plea in abatement and to the jurisdiction.

#### IV.

The court erred in overruling the defendant's general demurrer contained in its amended answer, being Section 1 of Section II thereof.

#### V.

The court erred in overruling defendant's demurrer No. 2 in Section II. of its amended answer.

#### VI.

The court erred in overruling demurrer No. 2, contained in Section II. of the amended answer; because the alleged agreement and contract set out in the amended petition as made by John H. Reagan representing the citizens of Palestine and the citizens of Palestine with Grow, or with the Houston & Great Northern Railroad

Company acting through Grow, was illegal and void and contrary to public policy, because:

(1) The consideration to the Railroad is alleged to have been an engagement of John H. Reagan's service to induce, or influence, and canvass the electors of Anderson County in favor of a bond issue; it being illegal and contrary to public policy to found any contract upon such an engagement to induce, canvass and influence the voters to adopt a contract for a bond issue.

(2) Because the consideration for John H. Reagan's services, to be given by the Railroad, is alleged to have been promised to the citizens of Palestine, a portion of Anderson County, not to the whole of such citizens; whereby the consideration would move to a portion of the voters and be a means of influencing and procuring their votes for a bond issue to be voted by the whole of the county.

#### VII.

The court erred in overruling demurrer No. 3 contained in Section II. of the amended answer.

#### VIII.

The court erred in overruling demurrer No. 3 contained in Section II. of said answer, because:

(1) Any agreements, promises and representations made by Grow, or other agents of the Railroad in promotion of a canvass of the county are irrelevant and immaterial.

(2) Because the contract with the County was required by law to be in writing, and could not be proved except by such writing, and was necessarily complete of the whole transaction.

(3) Because no testimony or matters could be received in evidence going to show or prove such promises, agreements and representations.

## IX.

The court erred in overruling demurrer No. 4 contained in Section II. of the amended answer, because:

(1) It is not now a matter of proof to determine what motives, if any, outside of the written contract, caused the voters to vote for the bond issue, and,

(2) The law required the contract with the County to be a proposition to be submitted to the voters for their approval, which writings necessarily stated all of the considerations.

## X.

The court erred in overruling demurrer No. 5 contained in Section II. of the amended answer, because:

(1) The only legal evidence of the considerations for the issue of the bonds was required to be in writing and of record, and,

(2) Because such records are not set forth and their contents in no way stated, and could not be subject to amendment, if subject to amendment at all by parol, until they have been stated.

## XI.

The court erred in overruling demurrer No. 6 in Section II. of the amended answer, because the allegations at which the demurrer is directed relate to matters which were required to be in writing, which writings are suppressed and left out of the pleadings.

## XII.

The court erred in overruling the demurrer numbered 7 contained in Section II. of the amended answer.

(1) Because neither Grow, nor the County Court could form a new contract after the election.

(2) Because there would be no new consideration, or consideration for the alleged representations of Grow to procure the delivery of the bonds.

(3) Because the contract could only be formed by an election and was not subject to variation or condition by

an understanding between Grow and the County Court after election.

### XIII.

The court erred in overruling demurrer No. 8 contained in Section II. of the answer because the allegations of the transactions between Hoxie and the citizens of Palestine, including Wright and Ozment, are insufficient to show the formation of a contract.

### XIV.

The court erred in overruling demurrer numbered 9 in Section II. of the amended answer, because it was not alleged that the agreement stated to have been formed by Hoxie was in writing, it being essential that the same should be in writing under the statute of Frauds.

### XV.

The court erred in overruling demurrer No. 10 in Section II. of the amended answer.

(1) Because it was not alleged how long, and for what period the houses were to be rented,

(2) Because it was not stated what houses were constructed, on what specifications, who were the owners, and what has become of them.

### XVI.

The court erred in overruling demurrer No. 11 contained in Section II. of the amended answer.

### XVII.

The court erred in overruling demurrer No. 11 in Section II. of the amended answer, because the defendant refused to allege the particulars of the ratifications of the alleged agreement, or the particulars of any acquiescence therein.

### XVIII.

The court erred in overruling demurrer numbered 12 in Section II. of the amended answer.



**XIX.**

The court erred in overruling demurrer numbered 13 in Section II. of the amended answer.

**XX.**

The court erred in overruling demurrer No. 14 in Section II. of the amended answer, and in overruling each of the sections thereof.

**XXI.**

The court erred in overruling demurrer numbered 15 in Section II. of the amended answer.

**XXII.**

The court erred in overruling demurrer numbered 16 in Section No. II. of the amended answer.

**XXIII.**

The court erred in overruling demurrer numbered 17 in Section II. of the amended answer, and in overruling each of the grounds assigned therefor.

**XXIV.**

The court erred in overruling demurrer No. 18 in Section No. II. of the amended answer.

**XXV.**

The court erred in overruling demurrer No. 19 in Section II. of the amended answer.

**XXVI.**

The Court erred, as shown in Bill of Exceptions No. 3, in refusing to subject to the rule Wright, Ozment, Bowers and Hughes, witnesses in this case, and in overruling the defendant's contention that they should be subject to the rule and removed from the Court Room.

**XXVII.**

The Court erred in admitting evidence on matter in regard to the executive board and executive officers of the railroad or railroads, over the defendant's objection, as shown by Bill of Exceptions No. 4.

## XXVIII.

The Court erred in admitting in evidence, over the defendant's objection as shown by its Bill of Exception No. 5, the matter therein stated.

## XXIX.

The Court erred in admitting in evidence from the minutes of the Railroad Company direction in regard to paying draft of Grow, President of the International and Houston and Great Northern Railroad Companies, to an amount not exceeding \$25,000.00 to be credited to Grow for extra services and expenses in procuring private donation of lands and county bonds to the International and Houston and Great Northern Railroad Companies, all as shown in defendant's Bill of Exceptions No. 6.

## XXX.

The Court erred in admitting in evidence the resolution of the Railroad or Railroads or Executive Committee, as shown in Bill of Exceptions No. 6, authorizing payment to Grow of \$25,000.00 to be credited to him for extra services and expenses in procuring private donation of lands and county bonds to the International and Houston and Great Northern Railroad Companies, all as shown by Bill of Exceptions No. 6.

(a) Because such evidence introduced is in modification of and in addition to the written contract with the County, and which the law required to be in writing.

(b) Because the contract in question was passed on by a vote of the people in 1872; more than forty years has elapsed since that time and such collateral matters are now inadmissible in evidence to modify the deed to or in any way change the original written contract, after the lapse of such a great length of time.

(c) The plaintiffs have announced that they would introduce the record made by the County, and its contracts subject to the vote of the people, which record

they have handed to the counsel for the defendant and it appears therefrom that the document offered, and the purpose for which it is offered, would be in direct conflict with the written document now exhibited, which is complete within itself and made a part of the Bill of Exceptions.

(d) Because it appears from the written record exhibited by the plaintiffs, and which they state they will introduce, that it contains a proper adjudication of the consideration, and the adjudication of the County Court of Anderson County itself showing that all matters were settled and accounted for about the date the order was made.

(e) Because if the plaintiffs had any right at all it was a personal right against the Houston and Great Northern Railroad Company now sold out, as appears by the pleadings in this case and the admissions made by the plaintiffs, and in their pleadings; and because it is not possible, as contended by the plaintiffs, that their rights were fixed against the property or properties by the subsequent act of 1889, and prior to the mortgage of 1881, whereby, as claimed, the plaintiffs would obtain a prior right to the mortgage and to the defendants holding thereunder, and because the claim of plaintiffs is that the act of 1889 would fix and procure, by a subsequent and retroactive act, security to the previous alleged contract of 1872, all of which would be unconstitutional and void.

### XXXI.

The Court erred in admitting in evidence, over the defendant's objection, that portion of the by-laws of the International and Great Northern Railroad Company relating to an executive committee, all as appears by the defendant's Bill of Exception No. 7.

### XXXII.

The Court erred in admitting in evidence the resolu-

tion read from the minutes of the Railroad of date July 21, 1874, allowing Grow a credit of \$5,000.00 in addition to previous amounts, all as appears in the defendant's Bill of Exception No. 8.

### XXXIII.

The Court erred in admitting in evidence, over the objection of the defendant, resolution of the stockholders of the International and Great Northern Railroad, relating to the leasing of the property of that company for 99 years to the Missouri, Kansas and Texas Railroad Company, all as appears in the defendant's Bill of Exception No. 9.

### XXXIV.

The Court erred in admitting in evidence, over the objection of the defendant as shown in its Bill of Exception No. 10, minutes of a resolution of the International and Great Northern Railroad Company in regard to the appointment of Eddie as General Manager, and in regard to authorizing him to make a formal confession of judgment, all as appears in said bill.

### XXXV.

The Court erred in refusing to grant the defendant's motion to exclude from the Court room Bowers, Ozment and Hughes, announced to be witnesses in this case, during the period while George A. Wright was testifying and while he should be testifying, and in refusing to exclude from the Court Room all of these four persons except the one testifying while any of them should be testifying, as shown in defendant's Bill of Exception No. 11.

### XXXVI.

The Court erred in refusing to exclude from evidence the testimony of Wright in regard to the alleged Reagan-Grow contract, and in admitting the same in evidence over defendant's objections, all as shown by defendant's Bill of Exception No. 12.

## XXXVII.

The Court erred in admitting in evidence the testimony of the witness Wright in regard to the speeches of Judge Reagan in canvassing the County for the bond issue, over the objections of the defendant, all as shown by its Bill of Exception No. 13.

## XXXVIII.

The Court erred in admitting in evidence the testimony of the witness Wright in regard to the speeches made by Judge Reagan and Grow at Palestine before or during the bond election, over the objections of the defendants, all as shown in Bill of Exceptions No. 14.

## XXXIX.

The Court erred in admitting in evidence the testimony of the witness Wright as to what was done or said by Grow after the election, in connection with Grow's procuring the county bonds from the County Court, over the objections of this defendant, all as shown in Bill of Exception No. 15.

## XXXX.

The Court erred in admitting in evidence, over the objections of the defendant, the testimony of the witness Wright in regard to the grounds of the International and Great Northern Railroad Company at Palestine, and the alleged reservation there of such grounds, all as shown in the defendant's Bill of Exception No. 16.

## XXXI.

The Court erred in admitting in evidence the testimony of the witness Wright over the objections of the defendant, in relation to the buildings of the International and Great Northern Railroad and describing same, at Palestine, all as shown in the Defendant's Bill of Exceptions No. 17.

## XXXII.

The Court erred in admitting in evidence the statements of the witness Wright in regard to an alleged con-

tract with H. M. Hoxie, a railroad officer, and in permitting him to testify in this connection to conversations with and statements had with Hoxie in the presence of Hayes, or with Hayes and in the presence of other persons, at the time such conversations are testified to have occurred with Hoxie, all as is shown in Bill of Exceptions No. 18 of the defendant.

#### XXXXIII.

The Court erred in admitting in evidence the testimony of the witness Wright in regard to a statement detailed by him as having been made by Hoxie concerning and involving a letter from Grow, over the objections of this defendant, all as shown in its Bill of Exceptions No. 18-A.

#### XXXXIV.

The Court erred in admitting in evidence, over the objections of the defendant, the testimony of Mrs. John H. Reagan in regard to a conversation, as stated by her, between Judge John H. Reagan and Grow and with or in the presence of others on or about March, 1872, at Judge Reagan's house, bearing upon the alleged Reagan-Grow contract, and in regard to any statement of any matter about said alleged contract—all as appears in defendant's Bill of Exceptions No. 19.

#### XXXXV.

The Court erred in admitting in evidence the testimony of the witness Jacobs to statements made in the speech or speeches by Grow, or Grow and Reagan, in 1872 in Palestine, all as appears by the defendant's Bill of Exceptions No. 20.

#### XXXXVI.

The Court erred in admitting in evidence, over the defendant's objections, the testimony of the witness Hughes to a speech or speeches of Grow, made in Palestine in 1872, all as appears in defendant's Bill of Exceptions No. 21.

## XXXXVII.

The Court erred in admitting in evidence the testimony of the witness Watts, over the objections of the defendant, to a speech or speeches of Grow, or Grow and Reagan, made in Palestine in 1872, all as appears in defendant's Bill of Exceptions No. 22.

## XXXXVIII.

The Court erred in admitting in evidence the testimony of the witness McClure, over the defendant's objections, to a speech, or speeches, of Grow, or Grow and Reagan, all as shown in defendant's Bill of Exception No. 23.

## XXXXIX.

The Court erred in admitting in evidence the testimony of the witness Ozment, over the objections of the defendant, to a speech or speeches of Grow and Reagan, all as shown in defendant's Bill of Exceptions No. 24.

## L.

The Court erred in admitting in evidence the testimony of the witness Ozment, over the defendant's objections, to a conversation with Hoxie in 1875 in Hoxie's private car, at which Hayes and Wright, and perhaps others, were present, all as shown in defendant's Bill of Exception No. 25.

## LI.

The Court erred in admitting in evidence, over the defendant's objections, the testimony of the witness Ozment as to a statement detailed as made by Hoxie of a letter he had received from Grow, all as appears by defendant's Bill of Exception No. 26.

## LII.

The Court erred in admitting in evidence, over the defendant's objections, the testimony of Judge Stedman in regard to a certain newspaper article and his action and advice and statements made thereon, all as shown in defendant's Bill of Exceptions No. 27.



## LIII.

The Court erred in admitting in evidence, over the defendant's objections, a certain newspaper article published in the "Daily Visitor," a Palestine paper of date May 16, 1899, and signed John H. Reagan, etc., all as appears in defendant's Bill of Exceptions No. 28.

## LIV.

The Court erred in overruling the objections to the charge submitted to counsel for defendant, the first of which is without number, but in substance is: To the submission of any special issues contained in the charge; because the court should peremptorily instruct a verdict for defendant, and give the peremptory instruction requested.

## LV.

The Court erred in overruling objection No. 1 to question No. 1 submitted in the charge of the court to the jury.

## LVI.

The Court erred in overruling objection No. 2 to the first question submitted in the charge to the jury.

## LVII.

The Court erred in overruling Objection No. 3 to question No. 1 submitted in the charge to the jury.

## LVIII.

The Court erred in overruling Objection No. 4 to the first question submitted in the charge to the jury.

## LIX.

The Court erred in overruling Objection No. 5 to the first question submitted in the charge to the jury.

## LX.

The Court erred in overruling the first objection to question No. 2 submitted in the charge to the jury.

## LXI.

The Court erred in overruling Objection No. 1 to question No. 3 submitted in the charge to the jury.

## LXII.

The Court erred in overruling Objection No. 2 to question No. 3 submitted in the charge to the jury.

## LXIII.

The Court erred in overruling Objection No. 3 to question No. 3 submitted in the charge to the jury.

## LXIV.

The Court erred in overruling Objection No. 1 to Question No. 4 submitted in the charge to the jury.

## LXV.

The Court erred in overruling Objection No. 2 to Question No. 4 submitted in the charge to the jury.

## LXVI.

The Court erred in overruling Objection No. 3 to Question No. 4, submitted in the charge to the jury.

## LXVII.

The Court erred in overruling Objection No. 4 to Question No. 4 submitted in the charge to the jury.

## LXVIII.

The Court erred in overruling Objection No. 1 to Question No. 6 submitted in the charge to the jury.

## LXIX.

The Court erred in overruling Objection No. 2 to Question No. 6 submitted in the charge to the jury.

## LXX.

The Court erred in overruling Objection No. 3 to Question No. 6 submitted in the charge to the jury.

## LXXI.

The Court erred in inserting in special instruction No. 2 given in response to and in lieu of special instructions

requested by defendant the language: "And special promises of Grow, if any, can only be considered by you in connection with all other evidence in determining whether the contract alleged to have been made by Grow with Reagan, acting for the citizens of Palestine, if he did so act, had theretofore been made," and in overruling the defendant's objection to such insertion made before the reading of the charge to the jury, as shown by Bill on file.

#### LXXII.

The Court erred in giving special charge No. 4 in connection with question No. 1, and in refusing to give the charge requested by defendant on the same subject, for the reason that the charge, as given, does not state the correct rule and does not fully express the law upon the subject as did the charge requested by the defendant, as shown by bill.

#### LXXIII.

The Court erred in giving the concluding sentence of special charge No. 3 given in response to and in lieu of special instruction requested by defendant, which sentence is as follows: "But if you find that such agreement had been made, then you may consider the establishment and maintenance of the shops and offices at Palestine along with all other evidence in the case in determining whether or not the company knowingly acquiesced in or ratified such agreements, if any were made." The objection being that there is no other evidence of ratification or of knowledge on the part of the defendant of the alleged contract, and the establishment and maintenance of shops and offices is no evidence of ratification or of knowledge of the existence of the contract, as shown by bill.

#### LXXIV.

The Court erred in inserting in special charge No. 5, given in response to and in lieu of special charge requested by the defendant, the words, "Or purposely in-

duced Reagan to believe," the objection being that there was no evidence of such purpose on the part of Grow; as shown by bill.

#### LXXV.

The Court erred in inserting in special charge No. 7 given in response to and in lieu of special charge requested by the defendant, the word "alone," the objection being that the word thus used implies that there had been other evidence along with which the acceptance of the bonds might be considered evidence of ratification; as shown by bill.

#### LXXVI.

The Court erred in refusing special charge No. 1 requested by the defendant instructing a verdict for the defendant.

#### LXXVII.

The Court erred in refusing said special charge No. 1 for the following reasons:

(a) A peremptory charge should have been given in this case in that the evidence conclusively and indisputably shows that in the years 1881-1888 the general offices of the International & Great Northern Railroad Company were in St. Louis, Missouri, whereby it appears that the right of the plaintiffs, if right they have, and of each of them, was barred by the statutes of limitation, plead by the defendants; whereby plaintiffs cannot recover either as to the general offices or as to the shops.

(b) In that the statute of Frauds was plead in this case by the defendants, and it was conclusively proved that the contracts upon which the plaintiffs rely, if contracts at all, were in parol when the law required them to be in writing.

(c) In that the plaintiffs stand upon an alleged contract represented to have been made between Grow and Reagan, and another alleged contract carrying forward the Reagan-Grow agreement, alleged to have been made between Hoxie, representing the railroad, and Wright and

others, in relation to rent houses; the evidence not being sufficient to show a contract between Reagan and Grow, which, however, even if shown, would be upon void and illegal considerations.

(d) In that the evidence in this case did not show that Reagan was representing the citizens of Palestine as differentiated from the citizens of the county, it being necessary on the pleadings, if there be any contract, to show such differentiation.

(e) In that the evidence as to the rent-house agreement did not show any consideration for the making of such agreement.

(f) In that no contract was shown between Reagan and Grow.

(g) In that no contract was shown between Hoxie, representing the railroad, and the citizens of Palestine.

(h) In that the consideration alleged for the alleged contract between Reagan and Grow representing the citizens of Palestine and the railroad, respectively, was not exclusively Judge Reagan's agreement to induce the voters to vote for the bond issue and to advocate the election, but also the actual conclusion of a contract between the railroad company and the county through the voting of bonds, from which it results that there was no concluded contract between Reagan and Grow, but merely the arrangement of preliminaries of a contract between the county and the railroad company, the terms of which contract must necessarily be determined from the record of the election, through which this was made and into which all such preliminaries were merged.

(i) In that the testimony of plaintiffs, in regard to the formation of the alleged contract between Grow and Reagan, representing their principals, detailed mere matters of conversation and negotiation, and did not state any agreement whatsoever, which amounted to a contract.

(j) In that the contract with the County of Anderson was in writing and was complete of all considerations

and unambiguous; and could not be added to or modified legally, and in that the issues submitted went entirely outside of such written contract which the law required to be in writing.

(k) In that as to the alleged rent-house contract, there was no allegation or proof of any obligation to rent the houses for any definite time, and no proof that they had been rented for any definite time.

(l) In that the alleged rent-house contract was wholly without consideration, and under the allegations and proof, constituted no obligation upon the part of the railroad company, by which it could be bound, and no obligation upon which Ozment and other citizens could be bound either to take, occupy or pay for such houses, if supplied and constructed, and was incapable of being specifically enforced at law or to sustain an action for damages for the breach thereof; and the evidence conclusively showed that the alleged rent contract was with the officers and stockholders exclusively of a private land and building corporation for profit, and not with the citizens of Palestine.

(m) In that no authority was shown in the evidence to Grow to form the alleged contract represented to have been executed between himself and Reagan, and in that no ratification of the same was shown.

(n) In that, as to the alleged contract between Hoxie and the citizens of Palestine, no authority was shown to Hoxie to bind the railroad by making such contract and no ratification of the same was shown.

(o) In that in its special plea No. VIII in the Amended Answer defendant set up and proved in evidence, without contradiction, the history of the foreclosure of the International and Great Northern Railroad Company under its second mortgage, being the mortgage of 1881, and the decree of foreclosure of the same, whereby it appeared that all causes of action now asserted had been disposed of and were barred by such proceedings

and whereby it also appeared that if not so barred every matter tendered for litigation herein had been reserved and only could be litigated in the United States Court, all as set out in such plea and the grounds therein stated.

(p) In that various matters were alleged in plea No. IX in the Amended Answer, all of which were proved in evidence and are undisputed and conclusively shown, whereby it appeared that defendant is not personally bound on the alleged contracts sued on and acquired its property free from all of the obligations asserted by the plaintiffs, all as more particularly appears in said special plea No. IX, and the defenses stated thereon.

(p-1) In that the plaintiffs have no right to recover herein under the grounds and deductions stated in the Special Plea 9 contained in defendant's Amended Answer on which the trial was had, each of which is now presented separately. All of the allegations in Section 9 of said Amended Answer being absolutely and conclusively shown, and because the plaintiffs claim under the act of 1889 which has no application to this case; but if the act of 1889 is applicable to this case, as construed and asserted by them, then the same in its application to the facts of this case is unconstitutional and void.

(q) In that it was set out in Section X of the Amended Answer specially plead that the defendant was chartered in August, 1911, on the terms of the charter therein stated, and after the construction by the Supreme Court of Texas of the Act of 1889 upon which the plaintiffs rely to fix a burden or claim against the properties of the defendant, all of the matters alleged in Section X being fully proved, whereby there would be no claim against the properties of the defendant, and it would take the same free of all claims thereon and itself would not be subject to the alleged contracts herein asserted; all as more specifically set out in Plea X and the deductions made thereon in the answer.

(r) In that, as set out in Special Plea No. XI-a, it



was proved without dispute that Anderson County was estopped to litigate questions herein propounded, having previously litigated the same, whereby none of the plaintiffs could have an action, and whereby the defendant was entitled to a peremptory instruction.

(s) In that all of the facts alleged in special plea XII were conclusively shown and without dispute, whereby it was shown that the plaintiffs to assert any right, if right they have, would have to redeem and pay to the defendant over twelve millions of dollars, which they do not offer to pay; and whereby it appears without dispute that their rights, if rights they have, are of less value than such sum of money. Wherefore, it appeared that they did not and could not make any redemption and that all of their rights should be barred, if rights they have.

#### LXXVIII.

The Court erred in refusing special charge No. 2 instructing the jury to leave out of consideration in coming to a verdict the alleged agreement between Grow, representing the Houston & Great Northern Railroad Company, and Reagan representing the citizens of Palestine.

#### LXXIX.

The Court erred in refusing said special charge No. 2 for all the reasons assigned in the last preceding ground of this motion but one, in relation to the Reagan-Grow contract.

#### LXXX.

The Court erred in not giving without qualification special charge No. 3 requested by defendant, concerning the contract between Anderson County and the Houston & Great Northern Railroad Company.

#### LXXXI.

The Court erred in refusing special Charge No. 4 requested by defendant, concerning the alleged contract be-

tween Hoxie for the railroad company and the citizens of Palestine, including Wright and Ozment, of date 1875.

#### LXXXII.

The Court erred in refusing the said special charge No. 4 for the reasons assigned in ground No. LXXVII above relating to the alleged contract mentioned in said special charge.

#### LXXXIII.

The Court erred after refusing special charges Nos. 1, 2, 3, and 4 above referred to in refusing to submit to the jury Question No. 1 requested by defendant.

#### LXXXIV.

The Court erred after refusing the said Charges Nos. 1, 2, 3 and 4 in refusing to submit to the jury Question No. 2 requested by the defendant.

#### LXXXV.

The Court erred, after refusing Special Charges Nos. 1, 2, 3 and 4, in refusing to submit to the jury Question No. 3, requested by the defendant.

#### LXXXVI.

The Court erred, after refusing special charges Nos. 1, 2, 3 and 4 in refusing to submit to the jury Question No. 4 requested by the defendant; and in refusing the instructions requested in connection with Question No. 4 so requested.

#### LXXXVII.

The Court erred in refusing to submit to the jury Special Issue No. 5 requested by defendant.

#### LXXXVIII.

The Court erred in refusing to submit to the jury Question No. 6 requested by defendant.

#### LXXXIX.

The Court erred in refusing to submit to the jury Question No. 7 requested by defendant.

## LXXXX.

The Court erred in refusing to submit to the jury Question No. 8 requested by defendant.

## LXXXXI.

The Court erred in refusing to submit to the jury Question No. 9 requested by defendant.

## LXXXXII.

The Court erred in refusing to submit to the jury Question No. 10 requested by defendant.

## LXXXXIII.

The Court erred in refusing Special Charge No. 1 requested by defendant in connection with Question No. 1 submitted by the court to the jury.

## LXXXXIV.

The Court erred in refusing Special Charge No. 2 requested by defendant in connection with Question No. 1 submitted by the court to the jury.

## LXXXXV.

The Court erred in refusing Special Charge No. 3 requested by defendant in connection with Question No. 1 submitted by the Court to the jury.

## LXXXXVI.

The Court erred in refusing Special Charge No. 4 requested by defendant in connection with Question No. 1 submitted by the court to the jury.

## LXXXXVII.

The Court erred in refusing Special Charge No. 1 requested by defendant in connection with question No. 2 submitted by the Court to the jury.

## LXXXXVIII.

The Court erred in refusing Special Charge No. 2 requested by defendant in connection with Question No. 2 submitted by the Court to the jury.

## LXXXXIX.

The Court erred in refusing Special Charge No. 1 requested by defendant in connection with Question No. 3 submitted by the court to the jury.

## C.

The Court erred in refusing Special Charge No. 2 requested by defendant in connection with Question No. 3 submitted by the court to the jury.

## CI.

The Court erred in refusing Special Charge No. 3 requested by defendant in connection with Question No. 3 submitted by the court to the jury.

## CII.

The Court erred in refusing Special Charge No. 1 requested by defendant in connection with Questions 4, 5 and 6 submitted by the court to the jury.

## CIII.

The verdict of the jury is without evidence to support it, and is against the great weight and preponderance of the evidence and so manifestly so as to show prejudice or bias upon the part of the jury in this:

## 1.

The jury answered question No. 1 "Yes," whereas:

(a) It was shown in the evidence that John H. Reagan in any dealings with Grow, was acting for Anderson County and not for the citizens of Palestine as differentiated from the citizens of the county.

(b) It was not shown in the evidence that Grow, in the alleged transaction, was representing the Houston and Great Northern Railroad Company and contracted for it and was authorized by it.

(c) It was not shown in the evidence that any mention or discussion of the general offices, machine shops and round-houses went beyond a mere negotiation, but

it was shown in the evidence that any mention of the same did not go beyond a mere negotiation.

(d) It was not shown in the evidence that any contract was made to erect and forever thereafter maintain the general offices, machine shops and round-houses of the Houston and Great Northern Railroad at Palestine, but it was shown in the evidence that no such contract or agreement was made.

(e) It was not shown in the evidence that any agreement was made by John H. Reagan to make a thorough canvas of Anderson County to induce electors to authorize the issue of the bonds in consideration of an agreement by the railroad with the citizens of Palestine through Reagan, but it was shown in the evidence that no such agreement was made.

2.

The jury answered question No. 2 "Yes," whereas,

(a) It was not shown in the evidence that the Houston and Great Northern Railroad Company, and the International & Great Northern Railroad Company, in part performance of the contract mentioned in question No. 1, and in compliance with said alleged contract, if any, established and maintained at Palestine machine shops and round-houses of the Houston and Great Northern Railroad Company and of the International and Great Northern Railroad Company, but it was shown in evidence that they did not so do.

(b) It was not shown in evidence that the Houston and Great Northern Railroad Company had made a contract and agreement mentioned in question No. 1, but it was shown in evidence that the Houston and Great Northern Railroad had made no such contract.

3.

The jury answered Question No. 3 "Yes," whereas,

(a) It was not shown in evidence that Grow made any such contract as is alleged.

(b) It was not shown in the evidence that the Houston and Great Northern Railroad Company authorized the making of any such contract by Grow.

(c) It was not shown in the evidence that the Houston and Great Northern Railroad Company ratified any such contract.

4.

The jury answered question No. 4 "Yes," whereas,

(a) It was not shown in the evidence that Hoxie contracted and agreed with the citizens of Palestine, including Wright and Ozment, to perform a previous contract alleged to have been made through Grow and Reagan, but it was shown in the evidence that he did not so contract and agree.

(b) It was not shown in the evidence that Hoxie made any such alleged contract or agreement as last mentioned for the further and additional consideration that the citizens of Palestine should at once construct and complete, or cause to be constructed at their own cost, all houses which might be demanded by the Company at reasonable rentals for use by employees of the Company, but the contrary was shown in the evidence.

(c) It was not shown in the evidence that Hoxie contracted and agreed with the citizens of Palestine, as submitted in question No. 4, in that the only testimony was to a dealing with a private corporation, organized for profit, at Palestine, for the purpose of owning etc. real estate and houses, and which was shown only to represent itself and not the citizens of Palestine.

(d) It was not shown in the evidence that Hoxie contracted and agreed with the citizens of Palestine, on the basis submitted in question No. 4, in that there was nothing shown in the evidence in support of any consideration to Hoxie representing the Railroad whereby any contract could exist.

(e) It was not shown in the evidence that there was any contract by Hoxie, representing the Railroad, with

the citizens of Palestine, in that there was no evidence that the citizens of Palestine, or anyone whatever, agreed to rent, or did rent the houses, or ever rented them for any definite time, or agreed to rent them for any definite time.

(f) There was no evidence that Hoxie ever contracted with the citizens of Palestine to forever keep and maintain general offices, machine shops and round-houses of the Railroad at Palestine in that there was no consideration shown in the evidence whatsoever of such alleged contract.

5.

The verdict of the jury in response to question No. 4 is insufficient to form a basis for any judgment based upon the contract referred to in question No. 4; for the reason that it finds an entirely different contract from that alleged in plaintiffs' petition in this: That the verdict finds a contract in which a part of the consideration for the promises made by Hoxie was the existence of a pre-existing contract between the Houston and Great Northern Railroad Company and the citizens of Palestine; whereas, the petition alleges a contract in which a part of the consideration for the promises of Hoxie was a pre-existing contract not merely with the citizens of Palestine but with Anderson County, and the existence of this pre-existing contract is not found in the verdict of the jury.

6.

The jury answered question No. 5 "Yes," whereas,

(a) It was not shown in evidence that the citizens of Palestine had constructed and completed, or caused the same to be done, certain houses at Palestine, being all the houses demanded by the Railroad, but it was shown in evidence that if any such houses were constructed, which is not admitted, they were not constructed by the citizens of Palestine, or on their account, or for their benefit, in the performance of any contract; but merely



by or on account of a private corporation organized for its own profit.

(b) It is not shown in the evidence that such houses, if any, were constructed in accordance with plans or direction or demands of the Railroad Company.

## 7.

The jury answered question No. 6 "Yes," whereas,

(a) It was not shown in evidence that the International and Great Northern Railroad Company authorized Hoxie to make any contract, such as is offered in this case.

(b) It was not shown in evidence that the International and Great Northern Railroad Company ratified any action of Hoxie in making any contract alleged in this case.

(c) There was no evidence that the International and Great Northern Railroad Company, through its Board of Directors, either authorized or ratified the alleged action of Hoxie.

## 8.

The jury answered question No. 7 "Yes," submitted separately by the Court, thereby finding that no burden or injurious effect would be suffered by the defendant in interstate commerce if required to keep and maintain its shops at Palestine, Texas, forever; whereas, it was shown in the evidence that such burden would exist.

## CIV.

The Court erred in entering a judgment for the plaintiffs, or any of them, in this case; in that it was conclusively proven, and in that it is indisputably in evidence that the cause of action, if any there was, arose to the plaintiffs, and each of them, when the International and Great Northern Railroad Company in 1881 moved its general offices to St. Louis, Missouri, maintaining them there until in the year 1888, whereby they were barred.

## CV.

The Court erred in entering judgment in this case because it was conclusively shown in the evidence, and without dispute, that the alleged contracts upon which plaintiffs sued were in parol, whereas they were required to be, by law, in writing, in accordance with the defendant's plea in that regard.

## CVI.

The Court erred in entering any judgment upon the special issues found by the jury in that all of the facts plead in Section VIII of the Amended Answer, were proved without dispute and were and are indisputable, whereby it appears that the matters herein attempted to be litigated had been disposed of by the United States Court, and, whereby, it appears that if such matters were not so disposed of in the United States Court, they had been reserved by that Court for its sole disposition in case of any future litigation; and, whereby, it appears that the defendant had purchased these properties upon an understanding and undertaking that all such issues as now attempted to be litigated were reserved for said United States Court.

## CVII.

The Court erred in entering a judgment in this case in that all the matters plead in Section VIII of the Amended Answer were conclusively proved and are shown to be true without controversy, whereby it was conclusively shown that this Court has no power or right to place itself in conflict with the decree of the United States Circuit Court for the Northern District of Texas, and the jurisdiction of the United States District Court for the Northern District of Texas, they having first acquired jurisdiction and reserved jurisdiction of the issues herein involved, which jurisdiction is now invoked by this defendant under such Section VIII in support of this action, and also Section 237 of the Act of Congress of

March 3, 1911 (36 Stats. 1087), in protection of the right, title, privileges and immunities established by and carried under the authority of the decree and proceedings of said United States Court.

#### CVIII.

The Court erred in entering judgment for the plaintiffs, and in entering judgment for any of them, upon the special issues found by the jury, in that all of the matters alleged in special pleas 8 and 9 of the defendant, contained in its Amended Answer, were indisputably proven and are uncontroverted in evidence, and are not in conflict with the answers given by the jury. Whereby it is indisputably proven that the plaintiffs are attempting to burden and add to the obligations of the alleged contracts on which they sue in violation of the Constitution of the United States and of the State of Texas.

#### CIX.

The Court erred in entering judgment upon the special issues found by the jury in that: In Section VIII of the Amended Answer it was set out that a certain suit was brought by the Mercantile Trust Company on the 25th of February, 1908, against the International & Great Northern Railroad Company, in the Circuit Court of the United States, for the Northern District of Texas, stating that on March 1st, 1892, the defendant had executed a certain mortgage, all of which is completely set out and alleged in said answer, and that this suit was transferred from the Fort Worth Division to the Dallas Division, and that the Farmers Loan and Trust Company, under permission, filed its Bill in the same Court against the Railroad Company and others to foreclose the mortgage of 1881, commonly known as the second mortgage executed by the railroad company for the principal amount of \$10,391,000, upon all properties as in said answer alleged, and that the bonds were duly issued, it being proved on the trial that the bonds for the whole principal

amount were issued on or about the date of the Mortgage of June 15th, 1881; and that George J. Gould and others filed a bill in said court against the International & Great Northern Railroad Company for the collection of certain judgments held by them as in their bill set out, and that a receiver was appointed and his appointment extended as in the answer stated, and these cases all consolidated and a supplemental bill filed by the Farmers Loan & Trust Company, alleging certain matters as in the answer stated, and that the court having entered various administrative orders, did foreclose the lien of the second mortgage upon all of the properties, tangible and intangible, together with all the corporate rights, privileges, immunities and franchises of the Defendant International & Great Northern Railroad Company and all the properties, as in the decree stated, decreeing in such decree that all of the right, title, estate and equity of all parties and of all persons claiming under them, or either of them, in and to the premises, properties and franchises and every part and parcel thereof, should be forever barred and foreclosed, and that the lien of the second mortgage upon these properties was prior and superior to any other lien, and subordinate only to the lien of the first mortgage, and binding the Commissioner to make sale of the properties providing that the sale should be made for not less than \$100,000.00 cash, the balance to be paid in bonds and coupons, secured by the second mortgage and the decree, at a valuation equal to the amount the same would be entitled to receive out of the amount bid for the property on the conditions stated, and that the property should be offered for sale subject only to the first mortgage and any unpaid indebtedness and liabilities contracted and incurred by the defendant in operation, which the court might thereafter order or decree to be prior or superior to the lien of the second mortgage, and subject only to such other debts, liens or demands of whatever nature incurred by

the receiver under orders of the court, and that the purchasers or purchaser or successor should have the right within six months after completion of the sale or delivery of the deed to elect whether or not to assume or adopt any lease or contract made by the defendant, and should not be held to have assumed any of the same if it should file its election not to assume same with the Clerk of the United States Court within such period of six months; and furthermore, it was decreed that all questions not disposed of by the United States Court were reserved by the court for future adjudication, as in the decree and answer set out. All of the above facts and other matters set forth in Section VIII, sub-sections 1 to 10, inclusive, of the Amended Answer were completely and absolutely proved, and all of the decrees and proceedings and documents plead were proved in evidence without controversy on the trial of this case.

It was further alleged that the sale was deferred by the court, and that it was finally made under the order of the court on June 13th, 1911, at Palestine, Texas, to Frank C. Nicodemus, Jr., and duly reported, and in all things confirmed; and furthermore, that on the 8th of August, 1911, this defendant, the International & Great Northern Railway Company, was incorporated as an independent company, according to the terms of its charter exhibited and included in the answer, and that due conveyance was made to the International & Great Northern Railway Company, a copy of which was exhibited with the Answer, being made by Nicodemus and others under order of the court, and duly confirmed; that the amount bid at the sale by Nicodemus was \$12,645,000.00, which was paid to the extent of \$244,253.45 in cash, the balance being paid with the bonds foreclosed, whereby a deficit resulted to the foreclosing second mortgage bond holders, and that the defendants purchased upon the faith and guarantee of the decree, and denounced all of the alleged contracts sued on under the terms of the decree, as pro-

vided by the decree, by filing its denunciation thereof in the United States Court. And all of these facts and all facts and allegations set out in Section VIII of such answer were completely and absolutely proved upon the trial, and were proved without controversy, and these facts are not in conflict with any issue found by the jury or with any finding of the jury thereon; and these matters were all presented to the court as a special plea in defense of this case, and were all admitted in evidence and proved without the slightest contradiction or controversy as to the truth thereof.

And in that in Section IX of its pleadings, being a special plea, the defendant alleged all of the matters alleged in Section VIII last above referred to, and proved the existence of the same without controversy and without conflict, and certain other matters below stated in the brief outline, all of which were completely proved, and no one of which, or the deductions thereon, are in conflict with the answers given by the jury on special issues submitted to it.

In Special plea IX, it was set out that various corporations had been chartered, afterwards consolidated into the Houston & Great Northern Railroad Company; that it was incorporated in 1866 by a charter exhibited and proved, wherein it was provided that when contracts signed by the president and countersigned by the Secretary or other authorized officer, were authorized by the Board under seal of the company in execution of an order of the Board, the same should be valid, and wherein it was also provided "that the annual meeting of the stockholders of this company shall be held at the principal office in the City of Houston, on the first Monday in December of each year, which shall be a day for the transaction of business by the stockholders, at which time the annual election of directors shall take place." It was also alleged that by the provisions of the charter and of the by-laws and of

those of the International & Great Northern Railroad Company the control and execution of contracts was lodged with the Board of Directors; that the International Railroad was incorporated in and consolidated with the Houston & Great Northern Railroad under provisions of the charters recognized by the Legislature, and that the Legislature had provided that all acts done in the name of either company should bind the consolidated company, and rights and liabilities against either company should be against the consolidated International & Great Northern Company. It was alleged that the International Railroad Company moved its offices to Houston, and consolidated with the Houston & Great Northern Railroad Company to form the International & Great Northern Railroad Company, where the general offices remained until in June, 1875, when they were removed to Palestine; that certain mortgages had been executed by the International Railroad Company, and the Houston and Great Northern Railroad Company, with which the International & Great Northern Railroad Company was chargeable, and that these mortgages had been foreclosed and the properties sold out in 1879, and purchased by Kennedy & Sloan, who conveyed the same to the International & Great Northern Railroad Company, all as more particularly set out in Sections VIII and IX of the Amended Answer, wherein the proceedings of said foreclosure sales, the foreclosure of the mortgage of 1881, foreclosed and sold out under the decree of the United States Circuit Court of the Northern District of Texas, as above stated, are all completely shown. All of the facts and allegations of Sections VIII and IX were completely proved and were uncontroverted in evidence, but none of them were submitted to the jury, nor any defense thereunder, and all of said matters being uncontroverted, are now submitted to the court as a complete defense in this case, and as a ground for the entering of judgment



in favor of the defendant, notwithstanding the matters found by the jury.

Wherefore, upon all of the above, the defendant represents that the Court erred in entering such judgment, because:

(a) The proceedings in the United States Circuit Court for the Northern District of Texas, and foreclosure and sale thereunder of the second mortgage of 1881, and the reservations of the decree did constitute a complete bar to this suit; because they show that this court has no jurisdiction to proceed herein, and because they show that all such alleged causes of recovery as are propounded by the plaintiff are barred herein by such proceedings.

(b) Because by the decree of foreclosure in the United States Circuit Court of the Mortgage of 1881, commonly called the second mortgage, if all matters herein propounded for litigation are not barred, they are reserved for the United States Court, and cannot now be litigated as matters therein not disposed of.

(c) Because it appears from the undoubted facts set out in Sections VIII and IX of the Amended Answer, and proved without controversy that the defendant holds under purchase by Nicodemus, who purchased as an agent and representative, and with the second mortgage bonds foreclosed and carried into the decree, except to the extent of \$244,253.55 paid in cash; second, such mortgage bond holders being the owners of the decree; and because it appears that they purchased to their loss something over \$300,000, that is, that amount short of their decree, and subject to the obligations and liabilities of the receiver and decree of foreclosure to their further loss.

(d) The plaintiffs rely upon the act of the Legislature of 1889, approved March 27th, entitled "An act to require all railroad companies to keep and maintain permanently their general offices, machine shops and round-

houses within the State of Texas at a certain place, and to keep all book accounts, etc., at such offices, and to provide penalties for failure to comply therewith," which act was substantially carried into Art. 6423, 6424 and 6425 of the Revised Statutes of the State of Texas of 1911, and plaintiffs claim that by force of such act they acquired a burden or lien upon the properties, intangibles and franchises of the defendant as a security and servitude against the same, and that they have a right of performance against and out of said property so sold and acquired by this defendant by the retroactive act of 1889, thereby having acquired, as they claim, such rights and securities by said act of 1889 as an addition to their alleged contracts of 1872 and 1875, upon which they sue and which were claimed to be personal merely until such subsequent act of 1889 gave such rights *in rem* or security and servitudes.

(e) If there were any contracts made such as the plaintiffs claim, they were contracts made upon the definitions and general statements in evidence, which do not include or state the burdens and additions and obligations thereafter attempted to be stated by the act of 1889, carried into R. S. 1911, 6423, 6424 and 6425, which act puts additions and burdens on said alleged contracts and makes modifications thereof; whereby the obligation of a contract or contracts, if they ever existed, is violated.

(g) The mortgage of 1881 foreclosed in the United States Court under the decree set out, and under which the defendant by sale has acquired the properties and franchises of the International & Great Northern Railroad Company, preceded the act of 1889, and the trustee and bondholders thereon did not know and could not have known of the existence of any such alleged contracts as are sued on in this case, and if they did know of same, they were then purely personal, but the plaintiffs now insist that they were secured *in rem* and by the

retroactive act of 1889. Therefore, the International & Great Northern Railway Company respectfully represents that it is entitled to judgment herein upon all of such allegations and facts which were completely proved and are contained in Sections VIII and IX of its special pleading, because of the seasonably presented Federal Questions, presented in its pleading and founded upon the Constitution of the United States of America, and for the following reasons:

(a-1) The act of 1889, and carried into Articles 6423, 6424 and 6425 of the Revised Statutes of Texas, as relied on and applied by the plaintiffs in this case, is unconstitutional and void and violative of sub-section 1 of Section 10 of Art. 1 of the Constitution of the United States of America, prohibiting any State from passing a law impairing the obligations of contracts; in that the attempt to enforce the act of 1889, above mentioned, of the Legislature of the State of Texas, against this defendant as giving a lien and fixing a burden and service upon the properties and adding to the obligations, if any, of the alleged contracts, and attempting to attach and add to those alleged contracts duties and conditions as set out in the statute, is null and void when applied to the prior contracts alleged in this case, and violates their obligations.

(b-1) Because of the act of the Legislature of 1889, and Articles 6423, 6424 and 6425 of the Revised Statutes of the State of Texas, are violative of sub-section 1 of Section 10 of Art. 1 of the Constitution of the United States, and impair the obligation of contracts, therein prohibited to be done by the law of any State, because they violate the contract and mortgage duly executed between the International & Great Northern Railroad Company, now sold out, and of the trustee of the second mortgage and the bondholders therein secured; which mortgage had been settled, ascertained and declared by the decree of foreclosure of the United States Court,

all as set out above; in that said act of 1889, and as carried into the present Revised Statutes of the State of Texas, adopted in 1911, and as asserted and claimed to be by the plaintiffs, adds to and places burdens on the original contracts, if any, stated by them, and as claimed by them secured such contracts by subsequent law as against the properties or property or some of them now held by the defendant and owned by it under foreclosure sale, as set out above; and in that such statutes as claimed by the plaintiffs by such subsequent act of 1889, convert what were before, at most, merely personal contracts into secured contracts and obligations as a burden upon the property, and running with the same in violation of the contract, being the mortgage executed in 1881, and in the accomplishment, as claimed, of a preference created by such statute, to be prior in law, though junior in time, to the obligations of the contracts secured by the mortgage and bonds of the International & Great Northern Railroad Company, whereby, as so applied, the statute is unconstitutional and void.

(c-1) And also, this said statute of 1889, and as carried into the Revised Statutes of Texas of 1911, is unconstitutional and void and in violation of sub-section 1 of Section 10 of Art. 1 of the Constitution of the United States of America; in that, by such sub-section every *ex post facto* law of the State is prohibited, and in that, by said statute of the State of Texas for a violation thereof, forfeiture of charter and a penalty of \$5,000 per day, is denounced to be recovered by the State; whereby, under the construction of plaintiffs, *ex post facto*, there has been given a penalty to be made prior in law, though junior in fact, to the mortgage under which this defendant holds, so that such immense penalties shall be collected as contended by plaintiffs out of the properties of this defendant, whereby such act, so violating the Constitution of the United States, is unconstitutional and void.

(d-1) Furthermore, said statute of the State of Texas, as construed and attempted to be enforced by the plaintiffs, is unconstitutional and void and violative of Section I of Art. 14 of the Amendments to the Constitution of the United States of America, commonly called the 14th Amendment, in that, as plaintiffs construe and attempt to enforce said statute by the denunciation of the penalties stated above, and the insistence that the statute and its penalties are applicable to the defendant, an attempt is made to abridge the privileges and immunities of the defendant, and to deprive it of its property without due process of law, and to deny to it the equal protection of the laws by penalizing or threatening to penalize it, should it resort to the courts to resist this action, and to litigate its rights in the premises; whereby, such act is unconstitutional and void by reason of the immensity of the penalties and the attempt thereby to shut the doors of the courts to the defendant in its attempt to test the legality of the claims of the plaintiffs and the constitutionality of said statute.

(e-1) Furthermore, the said statute of the State of Texas as construed by plaintiffs and sought to be applied by them is unconstitutional and void and violative of Section 1 of Art. 14 of the Amendments to the Constitution of the United States; in that, under its terms and burdens, it is an undue interference with the business and the obligations of the defendant, which it owes to the public, both in State and interstate commerce, whereby by meddling and dictating to the defendant it attempts to interfere with the discretion and power of the defendant, although a public carrier, to conduct its business within its own discretion, in obedience to constitutional laws of the State and of the United States; in that it denounces the forfeiture provided above and attempts by subsequent statute to place burdens and liens as claimed by the plaintiffs; and in that it prescribes where a great number of persons in the service of the defendant must

conduct their business and their offices and reside; thereby denying to this defendant the equal protection of the laws and depriving it of its property, without due process of law; by such illegal interference with its just and legal discretion to carry on its duties to the public and to perform its obligations to its stockholders and to other persons.

(f-1) Said act of 1889 of the Legislature of Texas, as originally enacted, and as contained in the Revised Statutes of the State and construed by the plaintiffs, is unconstitutional and void and violative of Section 1 of Art. 14 of the Amendments of the Constitution of the United States of America, in that such act is applicable only to chartered railroad companies and is not applicable to individuals, associations, receivers or other persons operating railroad carriers in the State of Texas or to other persons or corporations other than railroads, whatsoever. Whereby, such act constitutes legislation against a species or class not classifiable on any ground, or reason, or law, and places upon such species or class a burden not placed upon other persons in the same course or line of business or upon other corporations and associations doing business in the State of Texas; thereby violating the inhibition of said Section 1 against the passage of laws denying to any person within the jurisdiction of the State "the equal protection of the laws" and abridging the privileges and immunities of the defendant and depriving it of its property without due process of law.

#### CIX-a.

The defendant now repeats and states Sections "a" to "g" inclusive last above, and sections a-1, b-1, c-1, d-1, e-1 and f-1, last above, and recites each of them independently without making them dependent on the other statements contained in Section CIX above, and assigns each of the same as showing that the court erred in entering judgment herein.

## CX.

The Court erred in entering a judgment upon the special issues found by the jury, and in holding the defendant and its property subject to performance of the duties required to be performed by the judgment; because the plaintiffs rely upon the act of 1889, which act is unconstitutional and void for the following reasons:

(a) Because the act of 1889 inserts a penalty and a fine in an amount prohibited by the Constitution of the State of Texas, and is therefore null and void.

(b) Because that statute as construed and applied by the plaintiffs is retroactive and unconstitutional on its application to the facts of this case.

(c) Because the plaintiffs seek to recover in violation of the obligations of the contracts, which they plead, by adding to and burdening the same, and in violation of the mortgage of 1881 by the force of the subsequent statute of 1889, which in such application violates the Constitution of the State of Texas.

(d) Because the act of 1889 is *ex post facto* and denounces penalties as a burden upon the defendant and its property and because the statute of 1889 denies to the defendant the equal protection of the law and is violative of due process of law.

(e) Because by the foreclosures of 1879, above stated, and completely proved, and sales thereunder, every right of plaintiffs, if right they had, was eliminated.

(f) Because since the plaintiffs rely upon the act of the Legislature of 1889, carried into the Revision of 1911, Sections 6423, 6424 and 6425, they are attempting to enforce such act as giving a lien or burden upon the properties of the defendant in violation of sub-section 1 of Sec. 10 of Art. 1 of the Constitution of the United States of America, prohibiting any State from passing a law impairing the obligation of contracts, in that the attempt to enforce the Act of 1889, above mentioned, as giving a lien and fixing a burden and servitude upon the prop-



erties and adding to the obligations of the alleged contracts, is null and void, because such properties have been passed free and clear, and because by the sales, decrees and foreclosures made in 1879 every obligation, personal or otherwise of the International & Great Northern Railroad Company had been eliminated.

(g) Because the plaintiffs are attempting under the act of 1889 and as construed by them to revive obligations which had ceased under the law of the land to be obligations binding upon the International Railroad Company, or any of its properties, in that the statute so construed and applied is unconstitutional and void and in conflict with Section 1 of Art. 14 of the Amendments to the Constitution of the United States, whereby the plaintiffs by the attempted revival of such dead contracts and by the burdens attempted to be placed on them are attempting to deprive the defendant of its property without due process of law, and whereby it denies to the defendant the equal protection of the law.

(h) Because the charter of the Houston & Great Northern Railroad Company, the obligations of which were assumed by the consolidated International & Great Northern Railroad Company, provided that the domicile and the principal office of the railroad should be at Houston, Texas, and that said general offices should be at Houston, Texas; whereby, under the act of 1889 relied on by the plaintiffs, such alleged contracts as those asserted by the plaintiffs could not be enforced, because in said act of 1889 it was provided that the general offices should be kept at the place stated in the charter, and that the contract might be enforceable when no place is specified in the charter; whereby, as to the general offices, upon the grounds stated in this Section "h," the judgment should be for the defendant; and also should be generally for the defendant.

#### CXI.

The Court erred in entering a judgment upon the spe-

cial issues found, because the statute of 1889 carried into the Revised Statutes of the State of Texas of 1911, Sections 6423, 6424 and 6425 was construed by the Supreme Court of Texas before the charter of defendant was taken out, which charter was acquired on various considerations, all as alleged in Section 10 of the Amended Answer of the defendant, all the allegations of which were proved without dispute and are indisputedly in evidence; whereunder it was shown that the alleged contracts sued on were, if they existed, personal, and as was held by the Supreme Court of Texas before the taking out of said charter, which was acquired under burdens and conditions and at an expense of over a million dollars; wherefore the Court erred in entering such judgment because:

(a) Having purchased its charter under the onerous conditions of the act of September 1st, 1910, and paid the large sums of money in numerous cash payments in discharge of the obligations therein assumed, and said charter being approved by the authorities of the State of Texas, and locating its domicile and general offices in the City of Houston, Harris County, Texas, and the Supreme Court of Texas, as set out above, having finally determined that the act of 1889 did not impose as a burden on the properties or franchises any obligation to perform such alleged contracts as are asserted in this case, the attempt now to change the decision of the Supreme Court of Texas is an attempt by retroactive decision, after a contract and charter have been acquired, to change the purport, obligation and intent of the statute into which the construction of the Supreme Court of Texas entered; and is an attempt to violate sub-section 1 of Section 10 of Article 1 of the Constitution of the United States, prohibiting the States from passing any ex post facto law or law impairing the obligation of contracts, and also is in violation of, and attempt to violate Art. 14 of Section 1 of the Amendments of the Constitution of the United States of America, whereby an at-

tempt is made to deprive the defendant of its property without due process of law and to deny to it the equal protection of the laws.

(b) Because the above contract, the charter of this defendant, of August 8th, 1911, having been approved by the officers of the State of Texas and providing for its domicile, headquarters and general offices at the City of Houston, in Harris County, Texas, is now attempted to be violated under the circumstances stated and as a contract in contravention of the provisions of the Constitution of the United States of America, last above stated in sub-section "a."

(c) And for these reasons, stated in sub-section "a" and "b" above and in this Section of these pleadings, the International & Great Northern Railway Company now invokes the protection of the Constitution of the United States of America on the grounds stated and now pleads and represents that these Federal Questions are raised in this case which cannot be over-ridden by the plaintiffs, and that because of them the plaintiffs cannot recover herein.

## CXII.

The Court erred in entering judgment in this case upon the special issues found by the jury in favor of the plaintiffs, and in favor of any of them; in that it was conclusively proved that Anderson County was estopped and could not litigate any claim asserted in this case, by the previous litigation as set up in Section 11-A between the Houston & Great Northern Railroad Company and the County of Anderson, and the judgment as rendered in that cause; all as set out in Section 11-A. The facts set out were completely and indisputably shown, whereby it was *res adjudicata*; that no contract, such as is asserted herein, could be recovered on or be established, between the County of Anderson and the Houston & Great Northern Railroad Company; and that the bond contract in this case could not be modified, changed or

added to outside of the writings and considerations therein stated.

### CXIII.

The Court erred in entering judgment in this case upon the special issues found by the jury; in that all of the allegations section 12 of the Amended Answer were completely proved, it being shown, without controversy, that any right or claim of the plaintiffs, or any of them, if any they had, were subject to an obligation to redeem from the defendant such rights and to redeem and pay off the second mortgage of 1881 and decree thereon under which the defendant claims, and of which it is the assignee by purchase under the decree of the United States Court, the payment of which great sum of money, and the other amounts due the defendant under said proceedings the plaintiffs did not offer to pay, and cannot pay; the value of plaintiffs' rights, if any, being far below such sums; whereby the plaintiffs should have been barred from any judgment in this case.

### CXIV.

The Court erred in rendering the judgment entered herein upon the special issues, because all of the facts alleged in Section 13 of the defendant's Amended Answer were completely and absolutely proved without controversy. And because the plaintiffs, if entitled, were entitled only subject to the right of the defendant to foreclose the mortgage of the International & Great Northern Railroad Company of 1881 and the decree of the Federal Court foreclosing the same, under which the defendant holds its properties and rights, and of which it is the equitable assignee and subject to which the rights of the plaintiffs are, if any they have.

Wherefore the defendant protesting that the plaintiffs should have no judgment, and preserving all of its rights in that regard, yet now contends that the Court erred, if it entered any judgment for the plaintiffs, in not fore-

closing such mortgage and decree and in not sustaining and settling the same in favor of the defendant as against the plaintiffs, and each of them.

#### CXV.

The Court erred in admitting in evidence, over the objections of the defendant, a copy of a deed from the International & Great Northern Railroad Company to Hatfield, Jr., all as shown in defendant's Bill of Exceptions No. 29.

#### CXVI.

The Court erred in admitting in evidence, over the objections of the defendant, a deed from the Texas Land Company to the International & Great Northern Railroad Company, all as shown by defendant's Bill of Exceptions No. 30.

#### CXVII.

The Court erred in admitting in evidence a certain map of record in volume "P," page 540 of the Record of Deeds of Anderson County, all as is shown in defendant's Bill of Exceptions No. 31.

#### CXVIII.

The Court erred in admitting in evidence the map filed in the office of the County Clerk of Anderson County, on June 24th, 1875, all as shown by the defendant's Bill of Exceptions No. 32.

#### CXIX.

The Court erred in admitting in evidence certain deeds from the International Railroad Company, over the objections of the defendant, all as shown in defendant's Bill of Exceptions No. 33.

#### CXX.

The Court erred in admitting in evidence the testimony of the witness Ozment, over the objections of the defendant, as to the construction of buildings in Palestine under an alleged agreement with Hoxie, and as to mat-

ters connected with such buildings, all as shown in defendant's Bill of Exceptions No. 34.

#### CXXI.

The Court erred in admitting in evidence, over the objections of the defendant, the testimony of the witness Wright as to the construction of certain buildings in Palestine and in relation to such buildings, all as shown in defendant's Bill of Exceptions No. 35.

#### CXXII.

The Court erred in admitting in evidence the testimony of the witness Ozment as to what would have been done about building the houses, etc., under the alleged agreement with Hoxie if there had been no such agreement, all as shown by the defendant's Bill of Exceptions No. 36.

#### CXXIII.

The judgment of the Court is not sustainable herein and was erroneously entered because it was conclusively shown in the evidence, and is also a legal consequence, that the maintenance of any judgment by the defendant would constitute a burden upon interstate commerce and upon the duties which the defendant owes in interstate commerce.

#### CXXIV.

The judgment of the Court and the verdict of the jury are contrary to the manifest and clear preponderance of the evidence, and are also entirely unsupported in the evidence in that:

No authority was shown for the execution of the alleged contracts sued on emanating from the Board of Directors of the railroad, and in that no ratification of the alleged contracts sued on was shown by said Board of Directors.

#### CXXV.

The judgment of the Court is unsupported and is entirely contrary to the fundamental principles, because:

- (a) These alleged contracts are represented to be

binding forever and are not of that class which can be made to last forever under the fixed principles of law and the Constitution of the State of Texas, if any such contract there were.

(b) If the alleged contracts were contracts indeterminate in time then they rested in and on the discretion of either party, and have been terminated by the defendant if they were ever binding upon it or its property, which is not admitted but denied, or have been terminated by its predecessor; all of which conclusively appears in the evidence without controversy.

#### CXXVI.

The judgment of the Court and the verdict of the jury are contrary to the clear and absolute preponderance of the evidence, or are unsupported in the evidence, and such verdict could only have been reached by passion or prejudice, because:

(a) It was shown that the alleged Reagan-Grow contract if ever made, was made not for the sole benefit of the people of Palestine as differentiated from the people of the County.

(b) Because no consideration whatsoever is shown by the plaintiffs to have moved from the citizens of Palestine in connection with the alleged rent-house contract, the only evidence being that a private corporation in Palestine, for its own profit, constructed some houses for the use of employes of the Railroad.

#### CXXVII.

The Court erred in admitting in evidence the testimony of the witness Word, over the objections of the defendant, and relating to certain matters occurring in the County Court, as stated by him, in connection with the issue of bonds of Anderson County, all as shown in defendant's Bill of Exceptions No. 38.



## CXXVIII.

The Court erred in refusing to compel the witness Bowers to answer the question of the defendant, all as appears by defendant's Bill of Exceptions No. 39.

## CXXIX.

The Court erred in refusing to give the peremptory charge No. 1 requested by the defendant, because: The proceedings in the United States Circuit Court for the Northern District of Texas, and foreclosure and sale thereunder of the second mortgage of 1881, and the reservations of the decree did constitute a complete bar to this suit; because they show that this court has no jurisdiction to proceed herein, and because they show that all such alleged causes of recovery as are propounded by the plaintiff are barred herein by such proceedings.

## CXXX.

The Court erred in refusing to give the peremptory charge No. 1 requested by the defendant, because by the decree of foreclosure in the United States Circuit Court of the Mortgage of 1881, commonly called the second mortgage, if all matters herein propounded for litigation are not barred, they are reserved for the United States Court and cannot now be litigated as matters therein not disposed of.

## CXXXI.

The Court erred in refusing to give the peremptory charge No. 1 requested by the defendant, because it appears from the undoubted facts set out in Sections VIII and IX of the Amended Answer and proved without controversy that the defendant holds under purchase by Nicodemus, who purchased as an agent and representative, and with the second mortgage bonds foreclosed and carried into the decree, except to the extent of \$244,253.55 paid in cash; second, such mortgage bonds holders being the owners of the decree; and because it appears that they purchased to their loss of something over \$300,000.00

that is, that amount short of the amount of their decree, and subject to the litigations and liabilities of the receiver and decree of foreclosure to their future loss.

#### CXXXII.

The Court erred in refusing to give the peremptory charge No. 1 requested by the defendant, because the plaintiffs rely upon the act of the Legislature of 1889, approved March 27th, entitled "An act to require all railroad companies to keep and maintain permanently their general offices, machine shops and round-houses within the State of Texas at a certain place, and to keep all book accounts, etc., at such offices, and to provide penalties for failure to comply therewith" which act was substantially carried into Arts. 6423, 6424 and 6425 of the Revised Statutes of the State of Texas of 1911, and plaintiffs claim that by force of such act they acquired a burden or lien upon the properties, intangibles and franchises of the defendant as a security and servitude against the same, and that they have a right of performance against and out of said property so sold and acquired by this defendant by the retroactive act of 1889, thereby having acquired, as they claim, such rights and securities by said act of 1889 as an addition to their alleged contracts of 1872 and 1875, upon which they sue and which were claimed to be personal merely until such subsequent act of 1889 gave such rights *in rem* or security and servitudes.

#### CXXXIII.

The Court erred in refusing to give the peremptory charge No. 1 requested by the defendant, because if there were any contracts made such as the plaintiffs claim, they were contracts made upon the definitions and general statements in evidence, which do not include or state the burdens and additions and obligations thereafter attempted to be stated by the act of 1889, carried into R. S. 1911, 6423, 6424 and 6425, which act puts additions and

burdens on said alleged contracts and makes modifications thereof; whereby the obligation of a contract or contracts, if they ever existed, is violated.

#### CXXXIV.

The Court erred in refusing to give the peremptory charge No. 1 requested by the defendant, because the mortgage of 1881 foreclosed in the United States Court under the decree set out and under which the defendant by sale has acquired the properties and franchises of the International & Great Northern Railroad Company, preceded the act of 1889, and the trustee and bondholders thereon did not know and could not have known of the existence of any such alleged contracts as are sued on in this case, and if they did know of the same, they were then purely personal, but the plaintiffs now insist that they were secured *in rem* and by the retroactive act of 1889. Therefore, the International & Great Northern Railway Company respectfully represents that it is entitled to judgment herein upon all of such allegations and facts which were completely proved and are contained in Sections VIII and IX of its special pleading, because of the seasonably presented Federal Questions, presented in its pleading and founded upon the Constitution of the United States of America.

#### CXXXV.

The Court erred in refusing to give the peremptory charge No. 1 requested by the defendant, because the act of 1889, and carried into Articles 6423, 6424 and 6425 of the Revised Statutes of Texas, as relied on and applied by the plaintiffs in this case, is unconstitutional and void and violative of sub-section 1 of Section 10 of Art. 1 of the Constitution of the United States of America, prohibiting any State from passing a law impairing the obligations of contracts; in that the attempt to enforce the act of 1889 above mentioned, of the Legislature of the State of Texas, against this defendant as giving a lien

and fixing a burden and service upon the properties and adding to the obligations, if any, of the alleged contracts, and attempting to attach and add to those alleged contracts duties and conditions as set out in the statute, is null and void when applied to the prior contracts alleged in this case, and violates their obligations.

#### CXXXVI.

The Court erred in refusing to give the peremptory charge No. requested by the defendant, because of the act of the Legislature of 1889 and Articles 6423, 6424 and 6425 of the Revised Statutes of the State of Texas, are violative of sub-section 1 of Section 10 of Art. 1 of the Constitution of the United States and impair the obligation of contracts, therein prohibited to be done by the law of any State, because they violate the contract and mortgage duly executed between the International & Great Northern Railroad Company, now sold out, and of the trustee of the second mortgage and the bondholders therein secured; which mortgage had been settled, ascertained and declared by the decree of foreclosure of the United States Court, all as set out above; in that said act of 1889 and as carried into the present Revised Statutes of the State of Texas, adopted in 1911, and as asserted and claimed to be by the plaintiffs, adds to and places burdens on the original contracts, if any, stated by them, and as claimed by them secured such contracts by subsequent law as against the properties or property or some of them now held by the defendant and owned by it under foreclosure sale, as set out above; and in that such statutes as claimed by the plaintiffs by such subsequent act of 1889, convert what were before at most merely personal contracts into secured contracts and obligations as a burden upon the property and running with the same in violation of the contract, being the mortgage executed in 1881, and in the accomplishment, as claimed, of a preference created by such statute, to be prior in

law though junior in time, to the obligations of the contracts secured by the mortgage and bonds of the International & Great Northern Railroad Company, whereby, as so applied, the statute is unconstitutional and void.

#### CXXXVII.

The Court erred in refusing to give the peremptory charge No. 1 requested by the defendant, because this said statute of 1889 and as carried into the Revised Statutes of Texas of 1911, is unconstitutional and void and in violation of sub-section 1 of Section 10 of Art. 1 of the Constitution of the United States of America; in that, by such sub-section every *ex post facto* law of the State is prohibited; and in that, by said statute of the State of Texas for a violation thereof, forfeiture of charter and a penalty of \$5,000 per day is denounced to be recovered by the State; whereby under the construction of plaintiffs, *ex post facto* there has been given a penalty to be made prior in law, though junior in fact, to the mortgage under which this defendant holds, so that such immense penalties shall be collected as contended by plaintiffs out of the properties of this defendant, whereby such act, so violating the Constitution of the United States, is unconstitutional and void.

#### CXXXVIII.

The Court erred in refusing to give the peremptory charge No. 1 requested by the defendant, because said statute of the State of Texas as construed and attempted to be enforced by the plaintiffs, is unconstitutional and void and violative of Section 1 of Art. 14 of the Amendments to the Constitution of the United States of America, commonly called the 14th Amendment; in that, as plaintiffs construe and attempt to enforce said statute by the denunciation of the penalties stated above, and the insistence that the statute and its penalties are applicable to the defendant, an attempt is made to abridge the priv-

illeges and immunities of the defendant and to deprive it of its property without due process of law, and to deny to it the equal protection of the laws by penalizing or threatening to penalize it, should it resort to the courts to resist this action, and to litigate its rights in the premises; whereby, such act is unconstitutional and void by reason of the immensity of the penalties and the attempt thereby to shut the doors of the courts to the defendant in its attempt to test the legality of the claims of the plaintiffs and the constitutionality of said statute.

### CXXXIX.

The Court erred in refusing to give the peremptory charge No. 1 requested by the defendant, because the said statute of the State of Texas as construed by plaintiffs and sought to be applied by them is unconstitutional and void and violative of Section 1 of Art. 14 of the Amendments to the Constitution of the United States; in that, under its terms and burdens, it is an undue interference with the business and the obligations of the defendant, which it owes to the public, both in State and interstate commerce, whereby by meddling and dictating to the defendants it attempts to interfere with the discretion and power of the defendant, although a public carrier, to conduct its business within its own discretion, in obedience to constitutional laws of the State and of the United States; in that it denounces the forfeiture provided above and attempts by subsequent statute to place burdens and liens as claimed by the plaintiffs; and in that it prescribes where a great number of persons in the service of the defendant must conduct their business and their offices and reside; thereby denying to this defendant the equal protection of the laws and depriving it of its property, without due process of law; by such illegal interference with its just and legal discretion to carry on its duties to the public and to perform its obligations to its stockholders and to other persons.

## CXXXX.

The Court erred in refusing to give the peremptory charge No. 1 requested by the defendant, because said act of 1889 of the Legislature of Texas, as originally enacted, and as contained in the Revised Statutes of the State and construed by the plaintiffs, is unconstitutional and void and violative of Section 1 of Art. 14 of the Amendments of the Constitution of the United States of America, in that such act is applicable only to chartered railroad companies and is not applicable to individuals, associations, receivers of other persons operating railroad carriers in the State of Texas or to other persons or corporations other than railroads, whatsoever. Whereby, such act constitutes legislation against a species or class not classifiable on any ground, or reason, or law, and places upon such species or class a burden not placed upon other persons in the same course or line of business or upon other corporations and associations doing business in the State of Texas; thereby violating the inhibition of said Section 1 against the passage of laws denying to any person within the jurisdiction of the State "the equal protection of the laws," and abridging the privileges and immunities of the defendant and depriving it of its property without due process of law.

## CXXXXI.

The Court erred in refusing to give the peremptory charge No. 1, requested by the defendant, because the charter of the Houston & Great Northern Railroad Company, the obligations of which were assumed by the consolidated International & Great Northern Railroad Company, provided that the domicile and the principal office of the railroad should be at Houston, Texas, and that said general offices should be at Houston, Texas; whereby, under the act of 1889 relied on by the plaintiffs, such alleged contracts as those asserted by the plaintiffs could not be enforced, because in said act of 1889 it was pro-



vided that the general offices should be kept at the place stated in the charter, and that the contract might be enforceable when no place is specified in the charter; whereby, as to the general offices, upon the grounds stated in this section, the judgment should be for the defendant, and also should be generally for the defendant.

#### CXXXXXII.

The Court erred in permitting Mr. Albert Greenwood to make certain statements and representations to the jury, all as shown by defendant's Bill of Exceptions No.        taken by Mr. Ball, counsel for the defendants.

#### CXXXXXII-a.

The Court erred in its judgment in failing to define and restrict the injunction and command as to shops at Palestine and round houses there to those the subject-matter in litigation, and in refusing and failing to state that the judgment did not apply to other shops and round houses not at Palestine, or require them to be closed or to go out of operation. There is no ground in the pleading or evidence for the judgment so stated. It is insisted that no judgment should be entered for the plaintiffs, and subject to this contention this error is pointed out.

#### CXXXXXII-b.

The Court erred in its judgment in the sweeping terms applicable to all of the shops and round houses of the defendant in that:

A—There was no basis for the same in that the pleadings merely asserted that there had been a contract between Reagan and Grow, reaffirmed by Hoxie, for the location of the shops and round houses of the Houston and Great Northern Railroad Company forever at Palestine, which would not cover all of the shops and round houses of the defendant and its predecessor in title, which was composed of the consolidation of various roads;

B—Because there was no basis in the evidence what-

soever and no evidence to support the injunction as to all of the shops and round houses and repairs of the I. & G. N. R'y Co., but the only claimed basis in the evidence related to the shops and round houses of the Houston and Great Northern Railroad Company, which were consolidated with the International Railroad and other roads forming a system of which the Houston & Great Northern was a small part.

The above error is pointed out, subject to the unwaived contention of the defendant, that there is no basis for a verdict whatsoever.

No. . The court should grant a new trial in this case because that court erred in entering the judgment in favor of Anderson County, in that the contract with Anderson County was evidenced by judgments of the County Court, which specified the purposes for which the bond issue was made, it being specified in said judgments in substance and effect that the bonds were issued in consideration of the railway company's agreement to build its railway from the boundaries of the county into Palestine, and to establish and maintain a depot within half a mile of the court house at Palestine; and because the consideration for which said bonds were issued being so evidenced by said judgments and orders of the County Court, and being required to be submitted to a vote of the people, and being so submitted the contract between the railroad company and the County of Anderson could be neither added to nor subtracted from by any other evidence, either oral or written, and could be nowise modified from the contract as contained in the orders of the court and other documents which were the record of the bond issue; and further, defendant excepts to said judgment, because there is no foundation either in the issues found by the jury or in the facts for the recovery by Anderson County included in the judgment.

For all the reasons above set out the defendant urges that a new trial should be granted in this case, and the

verdict and judgment heretofore rendered should be set aside.

INTERNATIONAL & GREAT NORTHERN RAILWAY CO.,

*By its Attys.*

F. A. WILLIAMS,

N. A. STEDMAN,

ANDREWS, BALL & STREETMAN,

WILSON, DABNEY & KING,

NORMAN, SHOOK & GIBSON,

F. B. GUINN,

W. E. DONLEY,

N. B. MORRIS,

*Attorneys for Defendant, International & Great  
Northern Railway Company.*

# **ORDER OVERRULING MOTION FOR NEW TRIAL, ETC.**

ANDERSON COUNTY ET AL.

VS.

No. 6415.

THE INTERNATIONAL & GREAT NORTHERN  
RAILWAY COMPANY.

Filed Jan. 28th, 1914.

Recorded in Vol. "M," page 195.

In the District Court of Cherokee County, Texas.

This day came on to be heard in open court the Amended Motion, filed by the defendant January 17, 1914, under leave given by the order of the court, to set aside the verdict rendered and judgment entered in this case on the 17th of January, 1914, and to grant a New Trial in this case; and the Court having heard the argument of counsel; and being of the opinion that the Motion should not be sustained, does now adjudge the same to be in all respects overruled; to which action of the court in so

overruling the motion the defendant, the International & Great Northern Railway Company excepts, and it now here in open court gives notice of appeal to the Court of Civil Appeals of the State of Texas of the Sixth Supreme Judicial District, sitting at Texarkana, Texas.

And further upon motion of the defendant, it is now adjudged that the judgment entered in this case, of date January 17, 1914, be in all things superseded, pending the appeal of defendant, or writs of error sued out by defendant, provided that the defendant give a bond, with two or more good and sufficient sureties, to be approved by the Clerk of this Court, and to be payable to the plaintiffs, in the amount of Ten Thousand Dollars (\$10,000.00), and to be filed in this court within twenty (20) days after this date, and for the additional amount of not less than double the costs herein; conditioned that the defendant shall prosecute its appeal with effect, and in case the judgment of the Supreme Court or the Court of Civil Appeals shall be against it that it shall perform said judgment sentence or decree, and pay all such damages as said Court may award against it, and provided however, that the temporary injunction granted herein, as modified by the Court of Civil Appeals of the First Supreme Judicial District of Texas shall continue in full force pending defendant's appeal, or writs of error, and to the proviso last stated the defendant duly excepted.

Further, on the motion of the defendant, it is adjudged that for good cause shown the defendant have up to the 20th day of March, 1914, within which to prepare or cause to be prepared and file a statement of facts and bills of exceptions in this case. In open court, this 28th day of January, 1914.

A. E. DAVIS,  
*Judge.*

**MOTION TO CHANGE VENUE.****ANDERSON COUNTY ET AL.**

vs.

No. 6415.

**I. & G. N. R'Y COMPANY.**

Filed 7 day of July, 1913.

Filed Sept. 20, 1913.

In the District Court of Anderson County, Texas.

Now comes the defendant herein, not waiving its plea of personal privilege, but insisting on same as heretofore filed, and most respectfully represents to this Honorable Court that there exists in Anderson County, where this suit is pending, so great a prejudice against it on account of the nature of this suit, that it cannot obtain a fair and impartial trial.

This defendant further represents that there is a combination against it in said Anderson County, instigated by influential persons, by reason of which it cannot expect a fair and impartial trial in said county.

This defendant further represents that the plaintiffs in this suit are suing for an injunction to perpetually restrain the defendant Company from removing out of the City of Palestine its machine shops, roundhouses and the like, and to compel said defendant Company to remove back to Palestine and perpetually maintain its General Offices which are now situated in Harris County, Texas; the plaintiffs allege that Anderson County, by vote of the people, have paid to the defendant more than \$150,000.00 as a consideration for maintaining forever said General Offices and machine shops and the like in the City of Palestine, besides other valuable and sufficient considerations, the large sum of money having been raised by an ad valorem tax on the people throughout said county. The Commissioners' Court of said county, the City government of the City of Palestine, the individual plaintiffs named in this cause, and many other good citizens of said county have combined together, and are acting in concert with each other for the purpose of

prosecuting this cause to the successful termination in favor of the plaintiffs, and by reason of such concert of action, the payment of such taxes by the people throughout the county, and the general consensus of opinion that the plaintiffs should win, the merits of the case have been prejudged, and if it should be tried in Anderson County, the defendant in this cause cannot expect a fair and impartial trial on the issues of fact.

This defendant represents that the Court House at Rusk, the county seat of Cherokee County, is the nearest Court House to the Court House of Anderson County, in which this suit is pending.

Premises considered, this defendant prays that a change of venue be granted in this cause, and that it have an order changing the same to Cherokee County, and that the Clerk of this Court be directed to immediately make out a correct transcript of all the orders made in this cause, certify thereto officially under the seal of this Court and transfer the same with the original papers in this cause to the Clerk of the District Court of Cherokee County, Texas, at Rusk.

N. A. STEDMAN,  
F. A. WILLIAMS,  
ANDREWS, BALL & STREETMAN,  
WILSON, DABNEY & KING,  
N. B. MORRIS,

*Attorneys for Defendant.*

I, John M. King, one of the attorneys for the defendant herein, and one of the General Attorneys for said defendant Company, solemnly swear that the facts stated in the above Motion to Change the Venue are true and correct.

JOHN M. KING,

Sworn to and subscribed before me this the 7th day of July, A. D. 1913.

SEAL.

V. D. WILSON,  
*Notary Public in and for Harris  
County, Texas.*

We and each of us do solemnly swear that we are resident citizens of Anderson County, in which the above suit is pending, and that the facts stated in the above and foregoing motion for change of venue are, within our knowledge, true and correct.

G. B. ATTERSALL,  
WM. TREWIG,  
G. K. SAUNDERS.

Sworn to and subscribed before me this the 7th day of July, A. D. 1913.  
SEAL.

V. D. WILSON,  
*Notary Public in and for Anderson  
County, Texas.*

### **SUPERSEDEAS AND APPEAL BOND.**

ANDERSON COUNTY ET AL.

VS.

No. 6415.

INTERNATIONAL & GREAT NORTHERN RAIL-  
WAY COMPANY.

Filed Feb. 3rd, 1914.

In the District Court of Cherokee County.

WHEREAS, in the above entitled cause there was, on January 17th, 1914, on a verdict of the Jury, entered a judgment in favor of the plaintiffs therein as in said judgment fully set out; the plaintiffs being Anderson County (an organized county of the State of Texas), the City of Palestine (a municipal corporation of the State of Texas), and George A. Wright, J. W. Ozment, A. L. Bowers, John R. Hearne, Z. L. Robinson, E. W. Link, R. C. Sewell, John M. Colley and P. H. Hughes, suing for and having judgment for and on behalf of all citizens of the City of Palestine; and

WHEREAS, a Motion and an Amended Motion for a



New Trial were duly filed by the defendant, the International & Great Northern Railway Company; and

WHEREAS, thereafter, on January 28th, 1914, said Amended Motion was considered by the court and the court thereupon entered thereon the following judgment:

"This day came on to be heard in open court the Amended Motion, filed by the defendant January 17, 1914, under leave given by the order of the court, to set aside the verdict rendered and judgment entered in this case on the 17th of January, 1914, and to grant a New Trial in this case; and the Court having heard the argument of counsel; and being of the opinion that the Motion should not be sustained, does now adjudge the same to be in all respects overruled; to which action of the court in so overruling the motion the defendant, the International & Great Northern Railway Company excepts, and it now here in open court gives notice of appeal to the Court of Civil Appeals of the State of Texas of the Sixth Supreme Judicial District, sitting at Texarkana, Texas.

"And further upon motion of the defendant, it is now adjudged that the judgment entered in this case, of date January 17, 1914, be in all things superseded pending the appeal of defendant, or writs of error sued out by defendant, provided that the defendant give a bond, with two or more good and sufficient sureties, to be approved by the Clerk of this Court, and to be payable to the plaintiffs, in the amount of Ten Thousand Dollars (\$10,000.00), and to be filed in this court within twenty (20) days after this date, and for the additional amount of not less than double the costs herein; conditioned that the defendant shall prosecute its appeal with effect, and in case the judgment of the Supreme Court or the Court of Civil Appeals shall be against it that it shall perform said judgment sentence or decree, and pay all such damages as said Court may award against it, and provided however, that the temporary injunction granted herein,

as modified by the Court of Civil Appeals of the First Supreme Judicial District of Texas shall continue in full force pending defendant's appeal, or writs of error, and to the proviso last stated the defendant duly excepted.

"Further, on the motion of the defendant, it is adjudged that for good cause shown the defendant have up to the 20th day of March, 1914, within which to prepare or to cause to be prepared and file a statement of facts and bills of exceptions in this case. In open court, this 28th day of January, 1914.

"A. E. DAVIS,  
"Judge."

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS that we, the International & Great Northern Railway Company, a corporation incorporated under the laws of the State of Texas, as principal, and we, J. E. McAshan and B. D. Harris, as sureties, do hereby acknowledge ourselves bound to pay to the above mentioned plaintiffs, and to their successors, heirs and personal representatives, and to all persons entitled under them, Ten Thousand Dollars (\$10,000.00) as provided for in the above set out judgment, and also the additional amount of Three Thousand Dollars (\$3000.00), being not less than double the amount of estimated costs herein; CONDITIONED that the International & Great Northern Railway Company, the Appellant, shall prosecute its appeal with effect, and in case the judgment of the Supreme Court, or the Court of Civil Appeals, shall be against it, that it shall perform such judgment, sentence or decree and pay all such damages as said court may award against it; whereupon this bond shall be of no further effect, otherwise to remain in full force and effect.

To the due performance of this obligation we hereby

respectively bind ourselves, our successors, heirs and personal representatives.

Witness our hands this 31st day of January, 1914.

THE INTERNATIONAL AND GREAT NORTHERN RAILWAY  
COMPANY, *Principal*,

By WILSON, DABNEY & KING, *Its Attorneys of  
Record*.

J. E. McASHAN, *Surety*.

B. D. HARRIS, *Surety*.

ANDERSON COUNTY ET AL.

VS.

No. 6415.

INTERNATIONAL & GREAT NORTHERN RAIL-  
WAY COMPANY.

In the District Court of Cherokee County.

The foregoing bond executed by the International & Great Northern Railway Company and its sureties was this day presented to me for approval, and I do now estimate the costs in this case accrued, and to accrue in all courts not to exceed the sum of Fourteen Hundred Dollars (\$1400.00), and I do now approve the foregoing bond in all respects.

Witness my hand this 3rd day of February, 1914, and the seal of said court.

(Seal)

J. J. BOLTON,

*Clerk of the District Court of Cherokee County, Texas.*

The State of Texas,  
County of Harris.

I, Henry Albrecht, Clerk District Court Harris County, Texas, do hereby certify that J. E. McAshan and B. D. Harris, whose names appear signed to the annexed Bond, are, in my opinion, good and ample security for the amount herein specified, and that if said bond was offered to me for approval, the same would be accepted and approved.

To certify which I hereunto set my hand and official

seal, at office in Houston, Harris County, Texas, this the 2nd day of February, A. D. 1914.

[SEAL.]

HENRY ALBRECHT,  
Clerk District Court, Harris County, Texas,  
By A. J. SCHWEIKART, Deputy.

*Bill of Costs.*

No. 6415.

ANDERSON COUNTY et al.

vs.

I. & G. N. RY. COMPANY.

Issued March 26th, 1914.

In District Court of Cherokee County, Texas.

To Officers of Court, Dr.

*Cost Incurred in Anderson County District Court Before Transferred.*

2/ 7/12.	Filing & Docketing.....	.35
	Citation & Copy.....	1.25
	Citation & Copy.....	1.25
	Copy of Petition.....	20.00
	Injunction & Copy.....	1.25
	Injunction & Copy.....	1.25
2/17/12.	Fil. & Approving Bond.....	1.65
	Assignment of Error.....	.15
	Filing Motion.....	.15
2/24/12.	Filing Answer.....	.15
	Filing Paper.....	.15
4/21/13.	Filing 2 Papers.....	.30
7/ 7/13.	Motion Change Ven.....	.15
	Filing Bill of Exe.....	.15
	Order overruling plea.....	1.00
	Order Change Venue.....	1.00
	Sheriff' Fee.....	.85

Total cost in District Court Anderson County..... \$31.05

To Costs Accrued in Above Entitled Cause to Adjournment of  
December Term, 1913.

CLERK'S FEES.

9/20/13.	File & D'k't.....	.35
"	" (13) Papers.....	1.95
1/ 6/14.	" Pl't'ff's 1st Sup. Pet.....	.15
"	" (3) Depositions.....	.45
1/15/14.	" (39) Papers.....	5.85
" 16 "	" Court's Charge.....	.15
" 17/ 2.	" Verdict .....	.35
" 7 "	Empaneling Jury.....	.35
" 17 "	" (2) Motions.....	.30
"	Swearing (16) Wit.....	1.60
"	Appearance .....	.15
"	Judgment (Excess).....	4.50
"	Order for New Trial.....	1.00
"	" Amended Motion, New Trial.....	1.00
"	" Court overruling Motions.....	1.00
2/ 3/14.	Fil. & Approv. Bond.....	1.50
1/30/14.	Fil. (2) Orders.....	.30
3/18/14.	Fil. Statement Facts.....	.15
"	" (41) Bills Except.....	6.45
" 26 "	Taxing Cost.....	.25
"	Stenographer's Fees.....	3.00

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\$30.80

Transcript, 15 per hundred words.....	312.84
Stenographer's fee.....	3.00

*Sheriff's Fees.*

Jury Fee.....	5.00
Jury Tax.....	.50
Miscellaneous Costs.....	5.50
Clerk's Costs.....	340.64
Stenographer's fee for transcript of evidence.....	185.00
Costs of District Court of Anderson Co.....	31.05

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Total ..... \$570.69

THE STATE OF TEXAS,  
County of Cherokee:

In District Court, Cherokee County.

I, J. J. Bolton, Clerk of the Dist. Court in and for said County and State, hereby certify the above to be a correct account of the costs in above entitled and numbered suit up to this date.

Given under by hand and official seal, the 26th day of March. A. D. 1914.

[SEAL.]

J. J. BOLTON,  
Clerk District Court Cherokee County.

No. 6415.

ANDERSON COUNTY et al.

vs.

INTERNATIONAL & GREAT NORTHERN RAILWAY COMPANY.

I, J. J. Bolton, Clerk of the District Court in and for Cherokee County, Texas, do hereby certify that the foregoing pages numbered i-vii, and 1-628, inclusive, contain a true copy of all of the proceedings in this cause, and is a true and correct transcript of all of the proceedings held therein.

Witness my hand and the seal of the District Court of Cherokee County, Texas, this 27 day of April, 1914.

[L. s.]

J. J. BOLTON,  
Clerk of the District Court of Cherokee County.

The foregoing record was applied for by Wilson, Dabney & King, Attorneys for International & Great Northern Railway Company, on the 3 day of February, 1914, and delivered to Wilson, Dabney & King on the 27 day of April, 1914.

[L. s.]

J. J. BOLTON,  
Clerk of the District Court of Cherokee County, Texas.

THE STATE OF TEXAS,  
County of Bowie:

I, E. T. Rosborough, Clerk of the Court of Civil Appeals for the Sixth Supreme Judicial District of Texas, do hereby certify that the foregoing 629 pages of printed matter is a true and correct copy of the original Transcript from the District Court of Cherokee County, Texas, Filed in my Office on the 28th day of April A. D. 1914, in the

case of International & Great Northern Railway Company, Appellant, vs. Anderson County et al., Appellees, No. 1351 on the Docket of said Court.

In testimony whereof I hereunto set my Official signature and the seal of said Court at Texarkana, Texas, this the 24th day of July 1916.

[Seal Court of Civil Appeals of the State of Texas.]

E. T. ROSBOROUGH,  
*Clerk Court of Civil Appeals for the Sixth  
Supreme Judicial District of Texas.*



## STATEMENT OF FACTS.

631

ANDERSON COUNTY ET AL.,

vs.

INTERNATIONAL & GREAT NORTHERN  
RAILWAY COMPANY.

No. 6415

Be it remembered that this case, being called for trial before rulings on demurrers thereon on the 7th of January, 1914, came the defendant and demanded a trial of its Plea in Abatement, and to the jurisdiction of this court; whereupon it was agreed, as appears in the judgment in this case, between the plaintiffs and defendant in open court, that the court, without a jury, should pass upon and determine the issues presented by said Plea to the Jurisdiction and in Abatement, and the replication of the plaintiffs thereto, contained in their first supplemental petition, the Plea of Jurisdiction and Abatement being numbered I in the defendant's first amended original answer, and both parties waived a jury for the trial of such Plea in Abatement and to the Jurisdiction; whereupon the defendant introduced in evidence the following matters, all introduced upon the trial of this case before the jury, after such plea was disposed of, and set out in the Statement of Facts hereinafter, and now restated, or referred to by proper references, for the purpose of avoiding repetition; the same matters having been again introduced on the jury trial:

(1) The Bill of the Mercantile Trust Company vs. the I. & G. N. Railroad Company (this being an abbreviation used herein for the International & Great Northern Railroad Company), filed on February 25th, 1908, in the Circuit Court of the United States for the Northern District of Texas, the gist of which is stated, and, as far as relevant, on pp. 241-242 of the Statement of Facts of the trial before the jury, hereinafter.

The references to the Statement of Facts below are to the following Statement of Facts in the trial before the jury.

(2) It was proved that the suit instituted by the Bill of Complaint of Mercantile Trust Company was trans-

ferred on March 7th, 1908, from the Ft. Worth Division to the Dallas Division of the United States District Court.

(3) The Bill of Complaint of the Farmers Loan & Trust Company vs. the I. & G. N. R. R. Company et al., filed in the United States Circuit Court for the Northern District of Texas, numbered 2514, Equity, including the mortgage of the I. & G. N. R. R. Co. of 1881 sought to be foreclosed, and set out on pp. 243 to 274 of said Statement of Facts hereinafter.

(4) It was proved that in said cause 2514 Thomas J. Freeman had been appointed Receiver on the 20th of April, 1908, and that he had been appointed Receiver on the Bill of the Mercantile Trust Company in No. 2501 above, on the 25th of February, 1908.

(5) It was proved that George J. Gould and others had obtained permission to file their Bill of Complaint in said Circuit Court on the 14th of May, 1908, and on the 2nd of June, 1908, had filed the same in Equity Cause No. 2525, the gist of which Bill is set out in said Statement of Facts, p. 275, hereinafter.

(6 and 7) It was proved that in No. 2525 Equity, a decree was entered appointing Thomas J. Freeman Receiver on that Bill, and extending the previous appointments of him as Receiver on the two previous Bills, whereby his receivership covered all the properties of the defendant.

(8) It was proved that Thomas J. Freeman had in all three cases, as Receiver, filed his application in said Circuit Court, for the consolidation of the cases, and that they were directed to be consolidated by the court, under the style and as appears in the Statement of Facts hereinafter, pp. 275-276.

(9) The defendant introduced the amendment to the Bill, in the United States Court in Equity 2501, of the Farmers Loan & Trust Company filed June 7th, 1909, and set out in the Statement of Facts hereinafter, pp. 276-282.

(10) The defendant introduced the decree of foreclosure of the United States Circuit Court, entered May 10th,

1910, set out in the Statement hereinafter, pages 8 to 28, and 283. This is Exhibit "H" attached to defendant's amended answer.

(11) It was proved that said court entered an order deferring this sale.

(12) It was proved that on November 28th, said court made an order directing the case of the Marshall Car Wheel & Foundry Company vs. The I. & G. N. R. R. Co. should be consolidated with the previously consolidated cause.

(13) It was proved that the court finally directed that the sale should be made June 13th, 1911, by the Master Commissioner, under the terms and as directed by the Decree of Foreclosure of May 10th, 1910.

(14) It was proved that the sale of all the properties of the I. & G. N. Railroad Company upon notices given as prescribed by the decree of foreclosure, and in accordance with the decree, had been made, and that the sale had been in all things approved by the decree of the court, as appears by the Report of Sale of the Master Commissioner, and the approval thereof, being Exhibits "J" and "J-1" attached to the amended answer, and set out in the Statement hereinafter, at pages 35-45, 48-52.

(15) Next was introduced the charter of the defendant, of date August 8th, 1911, set out hereinafter at pp. 67-74, 284.

(16) Next was introduced a deed executed by the Master Commissioner making the sale to the defendant, and in which various others joined, being Exhibit "L" attached to the answer, which deed is set out in the Statement hereinafter, at pp. 52-67, and 284, and it was shown that the defendant, by acquiring the properties by such deed, had been operating the same under its charter and the laws of Texas.

(17) It was next shown that the amount at which the properties were bid in at the Master Commissioner's sale was \$12,645,000.00, whereby there was a deficit of \$317,387.72 on the decree, all as appears in the Statement hereinafter, at pp. 39-40, 285-286.

(18 and 19) It was shown that the defendant had purchased all of the properties of the sold-out I. & G. N. R. R. Company conveyed to it by the above set out deed, upon proceedings held in the United States Court, and under the decree thereof, and on faith thereof.

(20) It was shown that all notices provided for in the decree of foreclosure as conditions for the making of the sale had been given and published.

(21) The defendant introduced in evidence resolutions of itself not to adopt certain contracts, and denunciations of the same, all set out on pages 287-297 of the Statement hereinafter, and proved that the original of such denunciations had been filed with the Clerk of the United States Circuit Court at Dallas within six months after the completion of the sale and delivery of the deed of the Master Commissioner, and also, it introduced in evidence two notices which it caused within said time to be served on the Commissioners' Court of Anderson County, and the City Council of the Town of Palestine, by reading and delivering the same to said bodies at regular meetings, all of which are set out in the Statement of Facts on pages 297-298, hereinafter.

(22) The defendant proved that the bonds authorized by the mortgage of June, 1881, had all been issued on or about the date of the mortgage, and that such mortgage was authorized, being the mortgage foreclosed by the decree of May 10th, 1910, above.

Having introduced the above matters in evidence, the defendant rested on its Plea in Abatement and to the Jurisdiction, and the plaintiffs introduced nothing in evidence thereon, whereupon the court considered the same and overruled such Plea, to which action of the court the defendant excepted and took its Bill of Exceptions No. 2a. Thereafter, the trial proceeded, and the court having ruled on demurrers as appears in the judgment, the jury was impaneled and the trial proceeded before the jury; the above being all the facts whatsoever proved on the trial of the Plea to the Jurisdiction and in Abatement, and all matters in evidence bearing upon any controverted issue of fact thereon.

except a duly certified copy of the decree of the United States Circuit Court confirming the final report of the Master Commissioner and of the Receiver, dated Sept. 25, 1911, which is attached as Exhibit "A" to plaintiffs' first supplemental petition and which is copied on pages 48 to 52 of the Statement of Facts.

IN THE  
District Court of Cherokee County

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ANDERSON COUNTY ET AL.,

VS.

INTERNATIONAL & GREAT NORTHERN RAILWAY  
COMPANY.

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Be it remembered that the following is a true and correct statement of all the facts proved on the trial of this case, and of all matters in evidence bearing upon any controverted issues of fact.

ABBREVIATIONS.

In this Statement the sold out International & Great Northern Railroad Company is designated as the "I. & G. N. R. R. Co.," and the Houston & Great Northern Railroad Company is designated as the "H. & G. N. R. R. Co.," and the defendant herein, the International & Great Northern Railway Company, chartered in August, 1911, is designated as the "I. & G. N. R'y Co."

PLAINTIFFS' EVIDENCE.

1. Plaintiffs introduced the charter of the Houston, Tap and Brazoria Railway Company. This was a legislative charter of date September 1st, 1856; and provided that the corporation might have a stock of not over one million dollars, and be authorized to construct and maintain a railroad commencing at or in the City of Houston, and thence to such points on the Brazos River and County of Brazoria and on the Colorado River as might be found

suitable, that the immediate control and direction of the corporation shall be vested in a board of not less than five directors, and that whenever Seventy-five thousand Dollars of the capital stock of the corporation, should be subscribed, and five per cent. paid in, the commissioners appointed to open books and receive subscriptions "shall cause an election to be held by said subscribers at the City of Houston for not less than five directors"; also, that "a majority of the board of directors shall have the power of the full board and all conveyances and contracts executed in writing, signed by the President and countersigned by the Treasurer, or any other officer duly authorized by the directors under the seal of the Company, and in pursuance of a vote of the directors, shall be valid and binding." Also, that the company was authorized, by the vote of a majority of the stockholders, to unite with any other railroad company; converting the stock, assets and property, with that of any other company into one railroad company; and said road so united, or any portion of the same, may be managed and controlled by one board of directors and as one road, and under such name and style, as may be fixed upon by agreement; providing the name of one of said companies so uniting shall be retained. Also, "that this company shall have the right under this charter, within three years after the passage of this act, to construct a section of the road from Columbia, on the Brazos River, to such point in Wharton County as may be designated by a majority of the stockholders residing in the counties of Brazoria and Wharton. And the company building this section of the road shall keep their offices at Columbia in Brazoria County. That this act take effect from its passage, and shall expire in ninety years, unless it be renewed or extended."

2. Plaintiffs next introduced the legislative charter of the Houston & Great Northern Railroad Company of date October 26, 1866, the parts of which supposed to be relevant are as follows: Provision was made that commis-

sioners should meet in Houston and open books for subscription, that the subscribers to the capital stock should select directors, and should then be constituted a corporation under the name of the Houston and Great Northern Railroad Company, with ordinary corporate powers and authority to make contracts, to grant and to receive, and make by-laws for its government. The capital stock was not to exceed Six Million Dollars, and by section 4 it was provided: "The direction and control of the affairs of said corporation shall be vested in a board of not less than five, nor more than nine directors, as the by-laws may provide." The directors to be chosen by the stockholders at their annual meetings, "and to select one of their body as president, and have power to fill vacancies in their board, appoint a secretary, treasurer, and such other officers and agents as they might deem proper, and to make rules not inconsistent with the general laws," and it was provided: "They shall cause to be kept accurate books of accounts exhibiting the receipts and expenditures of the company. A majority of the directors shall constitute a quorum to do business, and shall have the power of the full board; and all conveyances and contracts in writing signed by the president, and countersigned by the Secretary, or any other officer duly authorized by the board of directors, under the seal of the company, when the same is in execution of an order of the board, shall be binding and valid." By section 6 it was provided that the company organized should be authorized to construct and build a railroad commencing at the city of Houston and running northward to Red River, connecting with the Memphis and El Paso Railroad as near Clarksville as practicable, "and passing as near the towns of Montgomery, Huntsville, Crockett, Rusk and Tyler, as cheapness of construction permitted, and the general advantages of the company will permit." By section 8 it was provided that the company might purchase or otherwise acquire and hold the land necessary for the



railway company, and necessary depots and other buildings connected therewith, and that the land taken for the road-bed should not exceed 50 yards in width and for depots and other buildings only such width as absolutely necessary. A provision was made for condemnation. By Section 11 it was provided that the Company should have the right to form a junction with any other railroad at any point between Houston and Clarksville or at either of its termini, upon such terms and conditions as might be agreed on by the companies, or in case of disagreement by arbitration. By Section 12 the company was given authority to borrow money with or without mortgage in conformity with the general laws and by-laws of the company and its charter. By Section 13 it was provided: "The annual meeting of the stockholders of this company shall be held at the principal office in the city of Houston, on the first Monday of December of each year, which shall be a day for the transaction of business by the stockholders, at which time the annual election of stockholders shall take place." Provision was made for an adjourned meeting of the stockholders, in the event that a majority of the stock should not attend at the annual meeting. By Section 14 it was provided that the company should be subject to all general laws in force or hereafter in force in regard to running over the road of one company by another when the public interest or the interests of commerce required it; "and may form a junction and connect with any other road, in such manner as may best and more certainly secure the construction of their railway." It was provided that the charter should remain in force for 50 years from the date of completing of the road, provided all conditions in the charter were complied with, and also that land donations might be received under the general laws of the State, and that the company should have the right to extend from Houston to Galveston.

3. Next was introduced the legislative charter of the

International Railroad Co., dated Aug. 5, 1870. The portions of this charter considered material are as follows: Barnes and others were constituted a body corporate to be known as the International Railroad Company, and to have succession and a common seal and capacity to make contracts and to make by-laws for its general government and management of its business; and Barnes and his associates, seventeen in number, were constituted a board of directors for the time being, a majority to be a quorum, to meet at such time and places as they may designate, with authority to elect a president and vice president from their number and to appoint a secretary and treasurer. The company was authorized to construct and operate a continuous line of railroad with single or double track, and a telegraph line from a point on Red River as nearly opposite Fulton, Arkansas, as might be expedient in forming a junction with the Cairo and Northern Railway, under construction; and thence by the most practical route across Texas by Austin and San Antonio to the Rio Grande River at a point at or near Laredo, to be selected by the company, as affording the best facilities for a continuation of the railroad to the City of Mexico and to the Pacific Ocean. Also authority to build branches. Right of way granted by the State and sites on State land. Capital stock was to be not over Twenty-Five Million Dollars. By Section 7 it was provided: "The immediate control and direction of the affairs of said company shall be vested in a board of not less than five directors, who shall elect from their number one president and one vice president." The directors were authorized to submit by-laws for the ratification of the stockholders, which should provide rules for holding meetings and all other things considered to be necessary. By Section 8 it was provided that the principal office of the Company should be established at such point on its line as might be deemed most convenient for the transaction of its business, and that it might be moved from time

to time, to such places on its lines, as the progress of the work of construction might render expedient or necessary. A donation of bonds of the State of Ten Thousand Dollars per mile was provided for. By Section 11 the company was authorized to borrow money, to purchase property upon its credit, and for the purpose of construction and maintenance, to issue its bonds payable in the lawful money of the United States, or gold, as the directors might elect, and to secure the payment of these bonds or obligations by mortgage on "its railroads, its capital stock, its corporate franchises, and any and all of its property, real and personal, or any part or portion thereof, in such manner and form as said company or its directors shall deem best or expedient." The capital stock and property of the company was exempted from taxation for five years, and the company required to commence construction within six months, and complete fifty miles of main track within eighteen months, and thereafter annually 75 miles, or 150 miles every two years. By Section 14 it was provided: "Said company shall have the right to connect itself with any other railroad company within or without the State, and under such terms as it shall deem best, to operate and maintain said railroad in connection or consolidation with any such other railroad company." The State reserved the right to regulate the rates, provided no distinction should be made between this and other railroads. The act was effective from its date.

4. The plaintiffs introduced the act of the Legislature of April 24, 1874, authorizing the I. & G. N. R. R. Co. to issue bonds, etc., and to borrow money at such rates as the directors might deem expedient, and to secure the same by mortgage or other liens upon its railroad and other property, or both; and to convert any bonds which might have been issued by either the International Railroad or by the H. & G. N. Railroad Company into stock of the I. & G. N. R. R. Co. at such rates as the directors

might deem expedient, or into new bonds issued in the name of the I. & G. N. R. R. Co.; and that all bonds, debts or liabilities incurred either by the International Railroad Co. or the H. & G. N. R. R. Co. should be of the same binding force and effect upon the I. & G. N. R. R. Co. they were upon the respective companies, and further: "All acts heretofore done in the name of either of said companies shall have the same binding force and effect upon the said I. & G. N. R. R. Co. that they had upon the respective companies; and all rights or liabilities existing between said companies, or either of them, and the State or third parties, shall inure to said Railroad Company, the same as they existed with the respective companies."

Next was introduced the act of the Legislature of March 10th, 1875, entitled "An Act for the relief of the International Railroad Company now consolidated with Houston and Great Northern Railroad Company, under the name of the I. & G. N. Railroad Co." This statute recited that on the 5th of August, 1870, the legislature had incorporated the International Railroad Company, and that it is claimed by the 9th section of this act, that the State obligated itself to donate its bonds at the rate of Ten Thousand Dollars per mile of constructed road; that two hundred miles had been constructed; and that the road had been consolidated with the H. & G. N. under the name of the I. & G. N. R. R. Company, and that there were questions as to the legal liability of the State to deliver the bonds.

Therefore, it was proposed to compromise these matters in full settlement of the claims of the International Railroad Company and the I. & G. N. R. R. Co. for the bonds of the State, and then a compromise was provided for, by the proposition to issue certificates of twenty sections of State land for each one mile of railroad completed, under the charter of August 5th, 1870, and that the lands and the properties of the railroad and its stock be

exempted from all taxes for 25 years from the 5th of August, 1875, except in counties and towns donating bonds to aid construction of the road and paying interest thereon, but these exemptions not to extend to the H. & G. N. Provision was made for the alienation of the land donation, and by Section 7 it was provided that this compromise should become effective, when a majority in amount of the stockholders of the I. & G. N. R. R. Co. should in person, or by proxy, at a meeting of the stockholders held for that purpose, accept the same, the act was effective from its date.

6. Next was introduced the decree entered by the United States Circuit Court for the Northern District of Texas of May 10, 1910, which is as follows:

IN THE UNITED STATES CIRCUIT COURT FOR  
THE NORTHERN DISTRICT OF TEXAS.

THE MERCANTILE TRUST COMPANY, Trustee,  
THE FARMERS LOAN & TRUST COMPANY, Trustee,  
GEORGE J. GOULD, ET AL.,

*Complainants,*

VERSUS

EQUITY CAUSE No. 2501.

INTERNATIONAL & GREAT NORTHERN RAILROAD  
COMPANY,

*Defendant.*

THE FARMERS LOAN & TRUST COMPANY, Trustee,  
*Complainant,*

VERSUS

EQUITY CAUSE No. 2514.

INTERNATIONAL & GREAT NORTHERN RAILROAD  
COMPANY, THE MERCANTILE TRUST COM-  
PANY and THOMAS J. FREEMAN, as Re-  
ceiver of the International & Great North-  
ern Railroad Company,

*Defendants.*

DECREE OF FORECLOSURE AND SALE UNDER  
MORTGAGE OF INTERNATIONAL AND GREAT

**NORTHERN RAILROAD COMPANY TO THE  
FARMERS LOAN AND TRUST COMPANY, TRUS-  
TEE, DATED JUNE 15th, 1881.**

These causes came on to be heard at this term upon the pleadings and proof under the bill of complaint filed in said Equity Cause No. 2514, by The Farmers' Loan & Trust Company, Trustee, on or about April 20th, 1908, and the supplemental bill of complaint of said The Farmers' Loan and Trust Company, Trustee, filed herein on or about June 7th, 1909, and upon all the papers on file, and was argued by counsel; and upon consideration thereof, it was, on motion of Geller, Rolston & Horan and Baker, Botts, Parker & Garwood, solicitors for the complainant, The Farmers' Loan and Trust Company, Trustee, all the other parties to said Equity Cause No. 2514 appearing by counsel and no objection being made.

**ORDERED, ADJUDGED AND DECREED, as follows, to-wit:**

I.—That all and singular the material allegations in the said bill and supplemental bill of complaint of The Farmers' Loan and Trust Company, Trustee, are true.

II.—That on or about the first day of November, 1879, the defendant International and Great Northern Railroad Company made its two certain mortgages or deeds of trust dated that day as follows:

1. A mortgage or deed of trust known as said defendant Railroad Company's First Mortgage, whereby said Railroad Company conveyed to John S. Kennedy and Samuel Sloan, Trustees, all and singular its lands, tenements and hereditaments then owned or thereafter to be acquired, including all its railroads, franchises, income, issues and profits, in trust, for the owners and holders of bonds to be issued thereunder, bearing interest at the rate of six per centum per annum, payable semi-annually on the first days of May and November in each year, and to become due and payable on the first day of November, in the year 1919, a large number of which bonds have been issued and are now outstanding.

2. A mortgage or deed of trust made to Samuel Thorne, William Walter Phelps and John S. Barnes, as Trustees, to secure an issue of said Railroad Company's income bonds, all of which bonds have been duly retired, and which said mortgage has been duly cancelled and satisfied of record.

III.—That on or about the 15th day of June, 1881, the said defendant International and Great Northern Railroad Company did execute its certain other mortgage or deed of trust, known as its Second Mortgage, dated that day, to the Complainant, The Farmers' Loan and Trust Company, as Trustee, and therein and thereby conveyed and transferred to said complainant, as Trustee, its railroads, property and franchises, as alleged in the said bill of complaint, to secure the issue of its bonds described in the said bill of complaint. The said Second Mortgage was made and is subject to said mortgage known as said defendant Railroad Company's First Mortgage, dated November 1st, 1879.

IV.—That on or about the 1st day of March, 1892, the said defendant International & Great Northern Railroad Company made its certain other mortgage or deed of trust dated that day, known as the said defendant Railroad Company's Third Mortgage, by which it conveyed to the defendant The Mercantile Trust Company, as Trustee, all and singular its lands, tenements and hereditaments then owned or thereafter to be acquired, including all its railroads, franchises, income, issues and profits, to secure an issue of \$3,000,000 of its Third Mortgage Four Per Cent. bonds, under which mortgage there have been issued and are outstanding bonds and bond scrip aggregating a face value of \$2,966,052.50. The said Third Mortgage dated March 1st, 1892, was expressly made and is subject to the said First Mortgage of said defendant Railroad Company dated November 1st, 1879, and to the said Second Mortgage of said defendant Railroad Company dated June 15th, 1881, and to all of the provisions of said last-mentioned mortgages, and to the powers, rights



and privileges as well as the covenants, duties and obligations of the said defendant Railroad Company therein respectively set forth and contained.

V.—That the said mortgage or deed of trust dated June 15th, 1881, being the mortgage or deed of trust set forth and described in the said bill of complaint and supplemental bill of complaint so filed by the said The Farmers' Loan and Trust Company, Trustee, as aforesaid, is a valid and subsisting mortgage and the proper act and deed of said defendant International and Great Northern Railroad Company, duly authorized and made, executed, delivered and recorded in all respects in conformity with law, and a valid conveyance for the purposes therein specified; that the said mortgage constitutes a valid conveyance of, and a valid and subsisting lien upon, the following property, premises and franchises, and of and upon all muniments of title thereto and evidences of ownership thereof, to-wit:

All and singular the lands, tenements and hereditaments of the defendant International & Great Northern Railroad Company whether owned at the date of the execution of the said Second Mortgage, namely, on the 15th day of June, 1881, or thereafter acquired by it, including its lines of railroad in the State of Texas, extending from the town of Longview, in the County of Gregg, in said State, through said county, and through the Counties of Rusk, Smith, Cherokee, Anderson, Leon, Robertson, Milam, Williamson, Travis, Hays, Comal, Bexar, Medina, Frio, LaSalle, Encinal and Webb to Laredo, in said last mentioned county; and from the town of Mineola in Wood County to Troupe in Smith County; and from the City of Palestine in Anderson County, through the Counties of Houston, Trinity, Walker and Montgomery to Houston in Harris County; and from the town of Spring in Harris County, through the counties of Montgomery, Waller, Grimes, Brazos, Robertson, Falls, McLennan, Limestone, Hill, Navarro, Ellis and Johnson to the City of Fort Worth, Tarrant County, with branches and branch lines

from the town of Overton to the town of Henderson, in Rusk County, from the town of Round Rock to Georgetown, in Williamson County, from the town of Phelps to the town of Huntsville in Walker County; from the City of Houston in Harris County to the town of Columbia in Brazoria County; from Navasota in Grimes County to Madisonville in Madison County; from Calvert Junction to Calvert, and from Waco Junction to East Waco; also the railway and railway tracks and property appurtenant thereto, and certain tracts of land in and adjacent to the City of Houston in Harris County, State of Texas, known as the Houston Belt Terminals; a total distance of about eleven hundred and six miles of completed railroad, all in the State of Texas; also the trackage rights of the said International & Great Northern Railroad Company from Houston in Harris County to Galveston in Galveston County in said State of Texas over the railroad of the Galveston, Houston & Henderson Railroad Company of 1882 accorded to it by an agreement between said last named railroad company and said International and Great Northern Railroad Company, dated November 19th, 1895; also all and singular the said International and Great Northern Railroad Company's railroad, tracks, rights of way, main lines, branch lines, superstructures, depots, depot grounds, station houses, engine houses, car houses, freight houses, wood houses, sheds, watering places, workshops, machine shops, bridges, viaducts, culverts, fences and fixtures, together with all its leases, leasehold-interests, leased or hired lands, leased or hired railroads, and all its locomotives, tenders, cars, carriages, coaches, trucks and other rolling stock, its machinery, tools, weighing scales, turn-tables, rails, wood, coal, oil, fuel, equipment, furniture and material of every name, nature and description, together with all its corporate rights, privileges, immunities and franchises, whether held at the time of the execution of the said Second Mortgage, namely, on June 15th, 1881, or thereafter acquired (including the franchise to be a corporation), and all the

tolls, fares, freights, rents, income, issues and profits thereof, and all the reversion and reversions, remainder and remainders thereof, as well as all property purchased or held by the Receiver herein, including any balance of cash, credits and income which may remain in his hands after application thereof, as herein provided or as has been or may hereafter be directed by the Court herein, to the payment of receivership obligations and charges, and to the payment of claims which may be allowed by the Court herein against the same with priority over said Second Mortgage dated June 15th, 1881; excepting, however, all land grants, lands, land certificates, town lots, and town sites, owned or controlled by the said International & Great Northern Railroad Company, at the date of the execution of said second mortgage, namely, on June 15th, 1881, or any time prior to said date, which were not, on the first day of November, 1879, or thereafter up to the said 15th day of June, 1881, actually occupied and in use by the said Railroad Company and necessary to the occupation and maintenance of its lines of railroad; and excepting further any portions of said premises and property which may have been released from the lien and operation of said mortgage dated June 15th, 1881, and the releases for which have been duly filed for record in the proper county.

VI.—That the lien of the said mortgage dated June 15th, 1881, upon the foregoing property is prior and superior to every other lien in favor of any party to this cause, and is subject and subordinate only to the lien of the said First Mortgage dated November 1st, 1879, except as hereinafter stated and provided.

VII.—That said defendant International and Great Northern Railroad Company, under and in accordance with the provisions of the said mortgage or deed of trust dated June 15th, 1881, duly made, executed and delivered, and the Complainant The Farmers Loan and Trust Company, as Trustee, in the manner therein provided duly certified and delivered, and the said defendant Railroad

Company duly issued and negotiated for value, ten million, three hundred and ninety-one thousand dollars (\$10,391,000), face value, of the bonds mentioned and described in said mortgage or deed of trust, in and by each of which bonds said defendant Railroad Company promised to pay to the bearer, or, if registered, to the registered holder thereof, on the first day of September, 1909, the principal sum therein named, in United States gold coin, and interest thereon in the meantime at the rate of six (6) per centum per annum from the first day of March, 1881, payable in like gold coin, semi-annually, on the first days of March and September in each year. All of said \$10,391,000 of bonds were at the time of the filing of the said bill of complaint and now are, outstanding and valid obligations of the said defendant Railroad Company entitled to the lien and security of the said mortgage or deed of trust dated June 15th, 1881.

VIII.—That on or about the twenty-seventh day of January, 1892, by an agreement between the said defendant Railroad Company and (among others) the holders of all said bonds then outstanding under the said mortgage or deed of trust dated June 15th, 1881, the interest upon said bonds was reduced to four and one-half per centum per annum for the period of six years from and after September 1st, 1891, such reduction to extend to and include the interest payable on September 1st, 1897, and it was further agreed that after September 1st, 1897, and until the maturity of said bonds, the same should bear interest at the rate of five per centum per annum; provided, however, that in case of default continued for the period of ninety days in the payment of any coupons upon said bonds unmatured at the date of said agreement, the original rate of interest, namely, six per centum per annum, should be restored and such coupons should be collectible and enforceable at such original rate of interest. All the said bonds outstanding at the time of the making of said agreement, as well as those thereafter issued under said mortgage or deed of trust by the said

defendant Railroad Company, bore interest in accordance with the provisions of the said agreement.

IX.—That on the first day of March, 1908, there became due and payable upon all the said \$10,391,000 face value of said bonds so issued and outstanding under said mortgage or deed of trust dated June 15th, 1881, as aforesaid, the semi-annual interest and coupons thereon maturing on that day and amounting, at the rate of five per centum per annum, to the sum of \$259,775; that demand was duly made for the payment of some of such interest, but said defendant Railroad Company made default in the payment of all such interest, and the whole amount thereof has ever since the said first day of March, 1908, remained, and still remains, due and unpaid; that the said default was a default upon coupons upon said bonds unmatured at the date of said agreement of January 27th, 1892; that said default has continued for more than a period of ninety days and had so continued prior to the filing of the said supplemental bill of complaint herein, and the said original rate of interest, namely, six per centum per annum, has been restored, and there is now in default upon the said interest and coupons which fell due on March 1st, 1908, in addition to the said sum of \$259,775, the sum of \$51,955, making a total of \$311,730.

That there became due upon all the said \$10,391,000 face value of said bonds so issued and outstanding under said mortgage or deed of trust dated June 15th, 1881, as aforesaid, the semi-annual installments and coupons thereon maturing, respectively, on the first day of September, 1908, and the first day of March, 1909; that the semi-annual installments and coupons maturing on said bonds on each of said dates respectively amounted to the sum of \$311,730; that in each instance demand was duly made for the payment of some of said interest and coupons, but said defendant Railroad Company made default in the payment of all said interest installments and coupons and the whole amount thereof has ever since the same fell due respectively as aforesaid remained, and still remains, due and unpaid.

The payment of the interest which fell due on some of said bonds on March 1st, 1908, having been duly demanded at the agency of the said defendant Railroad Company in the City of New York, and the default in the payment of such interest having continued for six months after such payment had been so demanded as aforesaid, the complainant, The Farmers Loan & Trust Company, Trustee, after the lapse of said six months, and during the continuance of such default, and prior to the first day of September, 1909, to-wit, on the 14th day of May, 1909, duly gave written notice to the said defendant Railroad Company of its option that the principal of all the said \$10,391,000 face value of said bonds should be and become immediately due and payable, and declared and duly elected that the said principal sum was and had become immediately due and payable, and thereupon the whole of said principal sum did become, and the same is now, due and payable and in default.

That in addition to the foregoing defaults upon the said bonds so issued and outstanding under the said mortgage dated June 15th, 1881, as aforesaid, the said defendant Railroad Company has defaulted in the payment of the semi-annual interest which fell due upon some of said bonds upon the following dates, the amounts of such defaults respectively being set forth opposite the said respective dates:

On March 1st, 1904.....	\$ 75.00
On September 1st, 1904.....	75.00
On March 1st, 1905.....	75.00
On September 1st, 1905.....	125.00
On March 1st, 1906.....	75.00
On September 1st, 1906.....	75.00
On March 1st, 1907.....	75.00
On September 1st, 1907.....	637.50

That each of said defaults has continued from the date upon which the same was made as aforesaid to the date of this decree, and still continues, and that all of said defaulted interest is due and unpaid; so that the following

sums are now due and payable at the date of this decree for principal and coupons and interest upon the said bonds so issued and outstanding under the said mortgage dated June 15th, 1881, as aforesaid, viz:

1. The amount of \$75.00 for coupons due March 1st, 1904, with interest on the amount of said coupons at the rate of six per centum per annum;
2. The amount of \$75.00 for coupons due September 1st, 1904, with interest on the amount of said coupons at the rate of six per centum per annum;
3. The amount of \$75.00 for coupons due March 1st, 1905, with interest on the amount of said coupons at the rate of six per centum per annum;
4. The amount of \$125.00 for coupons due September 1st, 1905, with interest on the amount of said coupons at the rate of six per centum per annum;
5. The amount of \$75.00 for coupons due March 1st, 1906, with interest on the amount of said coupons at the rate of six per centum per annum;
6. The amount of \$75.00 for coupons due September 1st, 1906, with interest on the amount of said coupons at the rate of six per centum per annum;
7. The amount of \$75.00 for coupons due March 1st, 1907, with interest on the amount of said coupons at the rate of six per centum per annum;
8. The amount of \$637.50 for coupons due September 1st, 1907, with interest on the amount of said coupons at the rate of six per centum per annum;
9. The amount of \$311,730 for coupons due March 1st, 1908, with interest on the amount of said coupons at the rate of six per centum per annum;
10. The amount of \$311,730 for coupons due September 1st, 1908, with interest on the amount of said coupons at the rate of six per centum per annum;
11. The amount of \$311,730 for coupons due March 1st, 1909, with interest on the amount of said coupons at the rate of six per centum per annum;
12. The amount of \$10,391,000 for the principal of



said bonds, with interest at the rate of six per centum per annum from the first day of March, 1909;

So that the entire sum due for principal and interest, and interest on the unpaid coupons, up to the day of this decree, is twelve million, one hundred and sixty-five thousand, five hundred and forty-five 60-100 dollars (\$12,165,545.60).

X.—That the property and premises above described are so situated that they cannot be sold except as an entirety, due regard being had to the best interests of those interested in the same; and further that the said defendant Railroad Company is unable to pay the said sum so found to be due.

XI.—IT WAS FURTHER ORDERED, ADJUDGED AND DECREED that the defendant International and Great Northern Railroad Company pay, or cause to be paid, within ten days after the entry of this decree to the complainant, The Farmers' Loan & Trust Company, as Trustee, for the use and benefit of the holders of the said bonds secured by the said mortgage dated June 15th, 1881, and the respective coupons for interest appertaining thereto, the sum hereinbefore found due upon said bonds and coupons, together with interest thereon at the rate of six per centum per annum from the date of this decree. In case the said amount shall be paid as herein decreed, then any party hereto may apply to this Court for such further relief and for such further directions as may be just and equitable.

XII.—IT WAS FURTHER ORDERED, ADJUDGED AND DECREED that in default of payment of the said sum as aforesaid by the defendant Railroad Company, or by any one claiming under it or for its account, or by the other parties defendants in the said Equity Cause No. 2514, or some of them, the said mortgage dated June 15th, 1881, shall be foreclosed and the said mortgaged premises, property and franchises, as well as all the property purchased or held by the Receiver herein, including any

balance of cash, credits and income which may remain in his hands after application thereof, as herein provided, or has been or may hereafter be directed by the Court herein, to the payment of receivership obligations and charges and to the payment of claims which may be allowed by the Court herein against the same with priority over said Second Mortgage dated June 15th, 1881, shall be sold as hereinafter directed, and all the right, title, estate and equity of redemption of the defendant Railroad Company and of each and all of the parties to the said Equity Cause No. 2514, and of all persons claiming or to claim under them or either of them, of, in or to the said premises, property and franchises and every part and parcel thereof shall be forever barred and foreclosed, and that said sale shall be made upon the terms and in the manner following, to-wit:

The said premises and property, real, personal and mixed, rights, privileges, immunities and franchises, wherever situated, shall be sold as an entirety and without valuation, appraisement, redemption or extension, at public auction to the highest bidder therefor, at twelve o'clock noon, at the passenger depot of the said defendant, International and Great Northern Railroad Company, in the City of Palestine, in the County of Anderson, in the State of Texas, on a day to be named by the Master Commissioner herein appointed in his notice of sale; that before making said sale the said Master Commissioner shall publish a notice thereof once a week for at least four weeks prior to such sale in the following newspapers, namely: in one newspaper in the City of New York, in the County of New York, in the State of New York; in one newspaper in the City of Palestine, in the County of Anderson, in the State of Texas; in one newspaper in the City of Houston, in the County of Harris, in the State of Texas; in one newspaper in the City of Austin, in the County of Travis, in the State of Texas; and in one newspaper in the City of Dallas, in the County of Dallas, in the State of Texas; the particular newspaper

to be selected by the Master Commissioner herein appointed, and to be newspapers printed, regularly issued and having a general circulation in said places respectively; and further, that the Master Commissioner, personally, or by some person to be designated by him to act in his name and by his authority, may adjourn the sale from time to time without further advertisement, but only on request of the said complainant The Farmers' Loan and Trust Company, Trustee, or its solicitors, or by order of the Court, or a Judge thereof.

The Master Commissioner shall receive no bid from any person until such person shall have deposited with him the sum of \$100,000. Such deposit shall be returned in case the depositor's bid be not accepted; but if his bid be accepted, then such deposit shall be held by such Master Commissioner on account of the purchase price.

The purchaser, when the property is struck down to him, shall at once pay the Master Commissioner, on account of his purchase, a sufficient sum to make up with his deposit ten per centum of his accepted bid. The deposit required before bidding shall be paid in United States currency or in such certified draft, certificate or cheque as may be satisfactory to the Master Commissioner, or in a certificate of The Farmers' Loan and Trust Company duly made payable to the order of said Master Commissioner. Said further payment shall be made either as aforesaid, or in the bonds and coupons secured by the said mortgage dated June 15th, 1881, taken at a valuation equal to the amount said bonds and coupons would be entitled to receive in cash out of the amount bid for said property. The certificate of the said The Farmers Loan and Trust Company that it holds bonds and coupons as therein described subject to the order of the party named therein, such certificate being by him transferred to the order of said Master Commissioner, shall be accepted in lieu of such bonds and coupons. Should such further payment be not made, the property shall be forthwith resold, without further advertisement, the Court re-

serving the right to consider such resale made on account of said successful bidder or as an original sale; and in case of such resale, the deposit received from the successful bidder shall be applied on account of the purchase price. Such further portions of the purchase price shall be paid in money as the Court may from time to time direct, the Court reserving the right to resell the premises and property herein directed to be sold upon the failure of the purchaser or purchasers, his, its or their successors or assigns, to comply with any order of the Court in that regard, and in case of any such resale or the failure of the purchaser or purchasers, his, its or their assigns, to comply with the terms of the bid or the orders of the Court relative to such additional payments, the said money, bonds and coupons so paid in as aforesaid shall be forfeited as liquidated damages and shall be applied towards the expenses of any resale ordered, or towards making good any deficiency or loss in case the property at such resale shall bring less than at the prior sale. The balance of the purchase price may be paid either in money or in bonds or overdue coupons secured by the said mortgage dated June 15th, 1881, each said bond and coupon being received for such sum as the holder thereof would be entitled to receive under the distribution herein ordered and according to the priority herein adjudged. The certificate of the said The Farmers' Loan and Trust Company that it holds bonds and coupons as therein described subject to the order of the party named therein, said certificate being by him transferred to the order of said Master Commissioner, shall be accepted in lieu of such bonds and coupons.

Any party to this cause and any holder or holders of any of the bonds and coupons so outstanding under said mortgage dated June 15th, 1881, as aforesaid, may bid and purchase at such sale.

The said premises and property are subject to, and the Master Commissioner shall offer the same for sale subject to, the said mortgage dated November 1st, 1879, made

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by said defendant Railroad Company to John S. Kennedy and Samuel Sloan, as Trustees, and known as said Railroad Company's First Mortgage; and subject also to any unpaid indebtedness or liability contracted or incurred by said defendant Railroad Company in the operation of its railroad which the Court may hereafter order or decree herein to be prior or superior to the lien of the said mortgage dated June 15th, 1881, except such as shall be paid or satisfied out of the income of the property in the hands of the receiver herein under orders of the Court entered or to be entered herein; and subject also to such debts, claims, liens and demands of whatsoever nature heretofore incurred or created or which may hereafter be incurred or created by the Receiver herein under orders of the Court heretofore or hereafter entered herein, and which have not been or shall not hereafter be paid by said Receiver under orders of the Court heretofore or hereafter entered herein, or other parties in interest herein; or out of the proceeds of such sale as hereinafter directed. Certain specific portions of said property and premises, namely: The San Antonio Passenger Station, the Colorado Bridge, and certain equipment, are respectively subject to, and shall be by the said Master Commissioner sold subject to, the existing recorded mechanic's lien, the First Mortgage Colorado Bridge Bonds and the unsatisfied recorded equipment liens, specifically and respectively affecting the same.

The Master Commissioner, when ordered by this Court, shall publish at least once a week for the period of four weeks, in one or more newspapers published in each of the cities in which the notice of sale is hereinabove directed to be published, a notice requiring holders of any claims for such unpaid debts or liabilities to present the same for allowance, and any such claims which shall not be so presented or filed within the period of three months after the first publication of such notice shall not be enforceable against said Receiver or against the property sold, or against the purchaser or his successors or assigns.

Any such purchaser or purchasers and his, its or their successors and assigns shall have the right to enter his or their appearance in this cause and he or they, or any of the parties to the said Equity Cause No. 2514, shall have the right to contest any claim, demand or allowance existing at the time of the sale and not then finally determined, and any claim or demand which may thereafter arise or be presented, which would be payable by such purchaser or his successors or assigns or which would be chargeable against the income in the hands of the Receiver or against the property purchased, and he or they may appeal from any decision relating to any such claim, demand or allowance.

IT WAS FURTHER ORDERED THAT William H. Flippen, Esq., of Dallas, Texas, be, and he hereby is, designated and appointed a Master Commissioner to make the sale hereby ordered and decreed and to execute and deliver a deed of conveyance and bill of sale of the property so to be sold to the purchaser or purchasers thereof upon the confirmation of such sale and completion of the payment of the entire bid as herein provided; the Court, however, reserving the right in term time or at Chambers to appoint another person such Master Commissioner with like powers, in case of the death or disability to act of the Master Commissioner hereby designated, or in case of his resignation or failure to act, or removal by the Court.

IT WAS FURTHER ORDERED AND DECREED that within thirty days from the confirmation of said sale, or such further time as the Court may allow, on application of the purchaser for good cause shown, the purchaser or purchasers, his, its or their successors and assigns, shall complete payment of the entire amount bid to the said Master Commissioner; and that on such payment the said purchaser or purchasers, his, its or their successors and assigns, shall be entitled to receive a deed of conveyance and bill of sale of the property purchased from the Master Commissioner, and from the other par-

ties to this cause as herein provided, and to receive possession of the property so purchased from the parties holding possession of the same, and the Receiver shall deliver all of the property so purchased which may be in his possession to the said purchaser or purchasers, his, its or their successors and assigns, subject, however, to the said Mortgage dated November 1st, 1879, made by said defendant Railroad Company to John S. Kennedy and Samuel Sloan, as Trustees, and known as said Railroad Company's First Mortgage, and subject also to any unpaid indebtedness or liability contracted or incurred by said defendant Railroad Company in the operation of its railroad which the Court may hereafter order or decree herein to be prior or superior to the lien of said mortgage dated June 15th, 1881, except such as shall be paid or satisfied out of the income of the property in the hands of the Receiver herein, under orders of the Court entered or to be entered herein, and subject also to such debts, claims, liens and demands of whatsoever nature heretofore incurred or created or which may hereafter be incurred or created by the Receiver herein under orders of the Court heretofore or hereafter entered herein, and which have not been or shall not hereafter be paid by said Receiver under orders of the Court heretofore or hereafter entered herein, or other parties in interest herein or out of the proceeds of sale as hereinafter directed, and subject also, as to certain specific portions of said property and premises, namely, the San Antonio Passenger Station, the Colorado Bridge, and certain equipment, to the existing recorded mechanic's lien, the First Mortgage Colorado Bridge Bonds and the unsatisfied recorded equipment-liens, specifically and respectively affecting the same. And the Court reserves jurisdiction over said property, notwithstanding such deed or deeds or delivery of possession, for the purpose of enforcing such payment.

IT WAS FURTHER ORDERED AND DECREED that the fund arising from such sale shall be deposited by



said Master Commissioner in a United States depository to be named by the Court and shall be paid out and applied only upon orders of the Court herein as follows:

1. To and for the payment of all proper expenses attendant upon said sale, including the expenses, outlays and compensation of the Master Commissioner to make said sale, as such expenses, outlays and compensation may be hereafter fixed and allowed;
2. To and for the payment of any Receiver's certificates which may be outstanding under the orders of the Court entered in the said Equity Cause No. 2514 or in said Consolidated Cause No. 2501, to the extent that the same shall not be paid out of income in the hands of the Receiver;
3. To and for the payment of the costs in said Equity Cause No. 2514 and the share of the costs in said Consolidated Cause No. 2501 of the said complainant, The Farmers' Loan and Trust Company, Trustee, and the other parties to its said bill as defendants thereunder, and to and for the charges, compensation, allowances and disbursements of the complainant, The Farmers' Loan and Trust Company, as Trustee, under the said mortgage dated June 15th, 1881, and its solicitors and counsel, and of the Receiver and his solicitors and counsel, and also to and for such other proper allowances, compensations and disbursements to the parties in said Equity Cause No. 2514 or their counsel and to the Special Master herein as the Court shall order. All of the payments to be made under this sub-division shall be hereafter fixed and allowed and taxed by this Court herein.
4. To and for the payment of the bonds and coupons of the defendant Railroad Company secured by the said mortgage dated June 15th, 1881, with interest thereon, to the amount hereinbefore specified, together with interest thereon at the rate of six

per centum per annum to the date of payment, or, if such fund be not sufficient to pay the same in full, then to the payment of the same pro rata; that each of the said bonds presented to the Master Commissioner shall, if the holder thereof shall so request, be stamped or endorsed in some way by said Master Commissioner, so as to show the amount that has been paid on account of the same, and on account of the coupon interest due thereon, and be returned so stamped and endorsed to the holder thereof; that in case of payment in full said bonds, with interest thereon, the same shall be delivered with payment in full stamped thereon, by the Master Commissioner, to the purchaser or purchasers at the sale, to be held as a muniment of title; and

5. If, after making all of the above payments, there shall be any surplus, the same shall be paid according to the further order of Court in that regard.

AND FURTHER, that in case there shall be any deficiency in the amount required to be paid in full of the several amounts directed and allowed to be paid, then the said Master Commissioner shall report to the Court the amount of the deficiency, and the complainant as Trustee, shall have judgment against the said defendant Railroad Company for the amount due, and shall have execution therefor, pursuant to the rules and practice of this court; and

IT WAS FURTHER ORDERED AND DECREED that the defendants International and Great Northern Railroad Company and Thomas J. Freeman, as Receiver of the International & Great Northern Railroad Company, and the complainant The Farmers Loan & Trust Company, be, and they hereby are, directed to execute and deliver but under the direction of the Master Commissioner, conveyances executed by them respectively by way of confirmation and further assurance of title to the said purchaser or purchasers, his, its or their assigns, of all and singular the mortgaged property and premises,

and every part and parcel thereof, of every kind and description, wherever situated, hereby directed to be sold by the Master Commissioner; and that the form of said conveyance and mode of execution thereof shall be settled and approved by the Master Commissioner or by the Court or a Judge thereof, if any question shall arise with reference thereto; and that in default of such conveyance or conveyances this decree shall operate as such; and that the purchaser or purchasers at any such sale, and his, its or their successors and assigns, shall have the right within six months after the completion of the sale and delivery of the deed of the Master Commissioner as herein provided to elect whether or not to assume or adopt any lease or contract made by the defendant Railroad Company, and such purchaser or purchasers, his, its or their successors and assigns shall not be held to have assumed any of such leases or contracts which he or they shall so elect not to assume; such election shall be shown by filing with the Clerk of this Court from time to time within said period a description of such leases or contracts which he or they shall so elect not to assume; and

IT WAS FURTHER ORDERED, ADJUDGED AND DECREED that all questions not hereby disposed of, including the discharge of the receiver and the settlement of his accounts, and including the disposition of all claims heretofore filed herein, or hereafter to be so filed in accordance with the provisions of this decree, are hereby reserved for future adjudication; and the Court reserves jurisdiction of this cause and of the property affected by this decree for the purpose of final disposition of all such questions and matters; and any party to this proceeding and any claimant whose claims have been or shall be so filed herein may apply to the Court for further orders and directions at the foot of this decree. And the Court reserves jurisdiction, upon due hearing, and subject to full right on the part of the purchaser to contest, to charge the property in the hands of the purchaser with any liabilities which have been, or which hereafter may at any time

tisement and announced the terms and conditions of sale in a loud and audible voice; when, at said offering, and on said conditions, Frank C. Nicodemus, Jr., of New York City, New York, having been the last and highest bidder, the said property, premises and franchises, muniments of title and evidences of ownership were struck off and adjudicated to the said Frank C. Nicodemus, Jr., for the sum and price of twelve million, six hundred and forty-five thousand dollars (\$12,645,000).

“That prior to the said bid, the said purchaser had deposited with me as such Master Commissioner, the sum of One Hundred Thousand dollars (\$100,000) in conformity with the terms and provisions of the said decrees; that immediately after the said sale the said purchaser signed and delivered to me a memorandum of his purchase, which is hereto annexed marked Exhibit ‘A,’ and paid to me on account of the said purchase a sufficient sum to make up with his said deposit at least ten per cent. of his said accepted bid, which said last mentioned sum was paid, in conformity with the said decrees, by the said purchaser handing to me certificates of the Farmers’ Loan and Trust Company representing nine hundred and ninety thousand dollars (\$990,000) face value of second mortgage bonds of the International and Great Northern Railroad Company with coupons annexed maturing March 1, 1908, and subsequently; that I issued to said purchaser a receipt, a copy of which is hereto annexed, marked Exhibit ‘B.’

“Dated June 13, 1911.

“Respectfully submitted,

“WILLIAM H. FLIPPEN,

“Master Commissioner.”

“Now comes, by its solicitors, The Farmers Loan and Trust Company, the complainant in the cause last above entitled, and upon the report of the sale of the property, premises and franchises of the International and Great

Northern Railroad Company, filed herein June 14th, 1911, and the exhibits attached thereto, moves the Court to confirm said report of sale and the sale therein reported, made June 13th, 1911, to Frank C. Nicodemus, Jr., for Twelve Million Six Hundred Forty-five Thousand Dollars (\$12,645,000).

“THE FARMERS LOAN AND TRUST COMPANY,

“By GELLER, RALSTON & STONE,

“BAKER, BOTTS, PARKER & GARWOOD,

“Its Solicitors.”

“IN THE CIRCUIT COURT OF THE UNITED  
STATES,  
FOR THE NORTHERN DISTRICT OF TEXAS.  
AT DALLAS.

THE MERCANTILE TRUST COMPANY,  
Trustee, THE FARMERS LOAN AND  
TRUST COMPANY, Trustee, GEORGE  
J. GOULD, ET AL., MARSHALL CAR  
WHEEL AND FOUNDRY CO., ET AL.,  
Complainants,

vs.

INTERNATIONAL AND GREAT NORTH-  
ERN RAILROAD COMPANY,  
*Defendant.*

Consolidated Cause,  
No. 2501.

THE FARMERS LOAN AND TRUST  
COMPANY, Trustee,  
Complainant,

vs.

INTERNATIONAL AND GREAT NORTH-  
ERN RAILROAD COMPANY, THE  
MERCANTILE TRUST COMPANY, and  
THOMAS J. FREEMAN, as RECEIV-  
ER of the International and  
Great Northern Railroad Com-  
pany,

Defendants.

Equity Cause,  
No. 2514.

“Now at this date, this cause coming on to be heard, upon the motion of The Farmers Loan and Trust Company, the complainant in the cause last above entitled for confirmation of the Master Commissioner’s report of sale, filed herein on June 14th, 1911, and the sale therein reported; and

“It appearing to the Court, that the Master Commissioner’s report of sale was filed herein on June 14th, 1911; and

"The Mercantile Trust Company, Trustee, appearing by its solicitors; the defendant International and Great Northern Railroad Company by its solicitor; the purchaser Frank C. Nicodemus, Jr., by his solicitor; George J. Gould, et al, the complainants in the general creditors bill, by their solicitors; the Marshall Car Wheel and Foundry Company, et al., the complainants in the bill filed herein May 7th, 1910, by their solicitors; and the Receiver, Thomas J. Freeman, in person, and consenting to the hearing of said motion without further notice, and making no objection to the making of an order thereon; and

"The Court being fully advised in the premises, it is, on motion of the solicitors for The Farmers Loan and Trust Company,

"Hereby Ordered: That the Master Commissioner's report of sale, filed herein on the 14th day of June, 1911, be, and it is hereby, in all things ratified, approved and confirmed, and that the sale to Frank C. Nicodemus, Jr., therein reported, be, and it is hereby, confirmed and made absolute, and the said Frank C. Nicodemus, Jr., is adjudicated the purchaser of said property, premises and franchises, subject, however, to all the terms and conditions of the decree of foreclosure entered herein on May 10, 1910, and subject also to the due performance by said purchaser, his successors or assigns, of all the obligations therein described.

"Dallas, June 14th, 1911.

"A. P. McCORMICK,  
"Circuit Judge, Fifth Circuit."

(10) Plaintiffs offered in evidence a formal written notice offered with statement by plaintiffs that it was notice of the causes of action herein sued on, read at the sale of the railroad and franchises of the I. & G. N. R. R. Co. by the Master Commissioner, at the time when such railroad and franchises were bid in by Frank C. Nicodemus, Jr.; whereupon the defendant objected to the admission of same upon the ground, first, that it was offered



out of due order, and, second, because it is immaterial and irrelevant to any issue in this case, and because no rights in this case can be determined by it being given or not given under the issues here," and plaintiffs thereupon stated, in view of the last objections urged by defendant, they would not insist upon the admission of the notice, and the same was not read in evidence.

11. The plaintiffs proved that the United States Circuit Court for the Northern District of Texas postponed the time for compliance by Nicodemus, under his bid, to September 15, 1911, by an order regularly entered.

12. Next there was introduced in evidence the final report of the Master Commissioner making the above sale, which is as follows:

UNITED STATES CIRCUIT COURT, NORTHERN  
DISTRICT OF TEXAS.

THE MERCANTILE TRUST COMPANY, TRUSTEE,  
THE FARMERS' LOAN AND TRUST COMPANY, TRUSTEE,  
GEORGE J. GOULD, ET ALS.,  
MARSHALL CAR WHEEL & FOUNDRY CO. ET AL.,

*Complainants*

—VERSUS—

CONSOLIDATED CAUSE

No. 2501.

INTERNATIONAL AND GREAT NORTHERN RAILROAD  
COMPANY,

*Defendant.*

THE FARMERS' LOAN AND TRUST COMPANY,

*Complainant*

—VERSUS—

EQUITY CAUSE

No. 2514.

INTERNATIONAL & GREAT NORTHERN RAILROAD COM-  
PANY, THE MERCANTILE TRUST COMPANY, AND  
THOMAS J. FREEMAN AS RECEIVER OF THE INTER-  
NATIONAL AND GREAT NORTHERN RAILROAD COM-  
PANY,

*Defendants.*

**FINAL REPORT OF WILLIAM H. FLIPPEN, MASTER COMMISSIONER, SHOWING PAYMENT OF PURCHASE PRICE AND CONVEYANCE AND TRANSFER OF PROPERTY TO INTERNATIONAL AND GREAT NORTHERN RAILWAY COMPANY.**

Now comes William H. Flippen, Master Commissioner, appointed by decree of this Court and entered herein on May 10, 1910, and reports as follows:

1. By reference to Report of Sale filed by the undersigned Master Commissioner on June 14, 1911, and duly confirmed by this Honorable Court, it will appear that the Purchaser at that time delivered to the Master Commissioner, pursuant to the terms of the decree of sale, a certified check for the sum of \$100,000 to qualify him as Bidder, and after the acceptance of his bid delivered in payment of ten per cent. of the purchase price as required by the decree a certificate of the Farmers Loan & Trust Company, Trustee, to the effect that it held to the credit of the Master Commissioner \$990,000 par value of the bonds and appurtenant unpaid coupons of the International & Great Northern Railroad Company, secured by the mortgage of said Company to the Farmers Loan & Trust Company, Trustee, dated June 15, 1881.

2. From time to time thereafter the time for the completion of the payment of the purchase price for the property and franchises sold on June 13, 1911, was extended by order of this Court, the last extension expiring on September 15, 1911. On September 13, 1911, Frank C. Nicodemus, Jr., the Purchaser of said properties and franchises, desiring to complete the payment of the purchase price by delivering to the Master Commissioner in part payment thereof the bonds of the International & Great Northern Railroad Company, secured by its mortgage of June 15, 1881, to the Farmers Loan & Trust Company, as Trustee, aforesaid, it became necessary to ascertain the distributive value of said bonds and appurtenant unpaid coupons in the proceeds of sale at which the same with

coupons thereto annexed could be accepted in payment of the purchase price under the terms of the decree of sale. To this end it became necessary for the Master Commissioner to ascertain the amount of expenses, disbursements and other allowances to be deducted under the terms of the decree of sale from the proceeds of sale before any distribution could be made on account of the bonds and coupons secured by said mortgage. Your Master Commissioner also undertook to ascertain approximately the cost in the several equity causes, consolidated under Cause No. 2501, and the several items of cost, expenses and disbursements provided by the decree were arranged as follows:

(a) With respect to the expenses attendant upon the sale including compensation and expenses and allowances to the Master Commissioner, the International & Great Northern Railway Company, Assignee of the Purchaser, as hereinafter more fully set forth, entered into a stipulation which was satisfactory to the Master Commissioner, whereby said Railway Company agreed to pay or cause to be paid as a part of the said purchase price of property and franchises such further sum in cash as might thereafter be fixed and determined by this Honorable Court as and for the compensation, allowances, disbursements and expenses of the Special Master theretofore appointed in this cause and of the Master Commissioner appointed in aforesaid decree, which said stipulation and agreement is on file with the Master Commissioner.

(b) It was ascertained by your Master Commissioner that there were no outstanding Receiver's certificates issued under the orders of this Honorable Court for the payment of which provision was made in said decree of sale; although there were outstanding certain Receiver's Equipment obligations of an aggregate principal amount of \$276,000 subject to which the property was sold and which were assumed by the Purchaser as a part of the purchase price in accordance with the provisions of the

order of this Honorable Court authorizing the Receiver to create and issue said obligations.

(c) Your Master Commissioner ascertained as accurately as possible the amount of costs which had accrued in the several causes consolidated into Equity Cause No. 2501, and the amount of said costs as thus ascertained was deducted from the amount distributable by the Master Commissioner to the holders of said second mortgage bonds and coupons and International & Great Northern Railway Company, assignee of the Purchaser as hereinafter stated, stipulated and agreed that in the event the amount of costs required by the foreclosure decree to be paid out of the fund arising from said sale should exceed the sum so ascertained it would upon the determination of said excess, pay the amount thereof upon the direction of the Court all of which will more fully appear from the original of said stipulation on file with the Master Commissioner.

(d) The purchaser at said sale delivered to the Master Commissioner a stipulation and agreement in writing duly executed by all of the parties of record to said causes and the Receiver by their respective solicitors, stipulating and fixing the amount of compensation and allowances to be made to the Farmers Loan & Trust Co. as Trustee, under the mortgage of June 15, 1881, and to other parties as contemplated by the provisions in this behalf contained in decree of May 10, 1910, and authorizing the Master Commissioner to pay the amounts so agreed upon to the respective parties entitled thereto from the proceeds of sale, which said stipulation and agreement is now filed with the Master Commissioner. The aggregate of the amounts so agreed upon for compensation, allowances and disbursements to the respective parties entitled thereto as aforesaid were deducted by the Master Commissioner from the proceeds of sale in arriving at the distributive value of the bonds and coupons aforesaid and the several amounts so stipulated and agreed upon have been paid to the respective parties en-

titled thereto under the terms of said agreement by the Master Commissioner as authorized under the terms of said stipulation.

(e) The decree of May 10th, 1910, found that there were outstanding and unpaid Coupons appertaining to bonds secured by the aforesaid mortgage of June 15th, 1881, which matured prior to March 1st, 1908, but which had not been presented for payment, of an aggregate principal amount of \$1,212.50, on which there was accrued interest at the rate of six per cent. per annum to the date of said decree. In order to avoid delay in making the settlement of the purchase price and difficulty in ascertaining the distributive value of the several bonds with coupons maturing March 1st, 1908, and subsequent thereto, the purchaser requested that said coupons maturing prior to March 1st, 1908, be eliminated from consideration in calculating the distributive value of said bonds with coupons maturing March 1st, 1908, and undertook and agreed to pay to the Master Commissioner the ascertained value of all of said \$1,212.50 of coupons maturing prior to March 1st, 1908, on the basis of said decree of May 10th, 1910, which amount aggregating the sum of \$1,568.00 has been paid to the Master Commissioner by the International & Great Northern Railway Company, assignee of the purchaser and is now held by the Master Commissioner subject to the orders of the Court.

(f) After deducting the sums hereinbefore mentioned and making due provision for expenses and allowances provided by said decree of sale as aforesaid and eliminating from consideration the value of said coupons maturing prior to March 1st, 1908, provided for by separate fund deposited with the Master Commissioner as aforesaid, it was ascertained that the balance of said purchase price available for distribution to the bonds of the International & Great Northern Railroad Company secured by its mortgage of June 15, 1881, and coupons thereunto belonging maturing on March 1st, 1908, and subsequent thereto, mentioned in said decree of sale, was \$12,466,-

130.45, and that the distributive value of each of said bonds with coupons maturing March 1st, 1908, and subsequent coupons attached, was \$1,199,704,595.

3. On September 13th, 1911, Frank C. Nicodemus, Jr., the Purchaser of said property and franchises at said sale presented to the Special Master in partial payment of the purchase price of said property and franchises, bonds of the International & Great Northern Railroad Company secured by its mortgage of June 15th, 1881, to the Farmers Loan and Trust Company, Trustee, in aggregate par value of \$9,346,500 of principal with coupons maturing March 1st, 1908, and subsequent coupons thereto attached, which together with the bonds of an aggregate par value of \$990,000 of principal with coupons maturing March 1st, 1908, and subsequent coupons attached, for which certificate to the order of the Master Commissioner was presented to him at the time of acceptance of said bid, made the total amount of said bonds presented to the Master Commissioner in payment of said bid \$10,336,500 in aggregate par value of principal, leaving outstanding bonds for which provision must be made in cash of aggregate par value of \$54,500 of which the distributive value on the above basis amounted to an aggregate sum of \$65,383.89; and at the same time the Purchaser delivered the Master Commissioner in payment of the balance of the purchase price of said property and franchises, a certified check for the sum of \$144,253.45, being the entire amount of the balance due.

The entire purchase price of \$12,645,000 was thus paid by the purchaser as follows:

Amount paid by purchaser in cash on June 13th, 1911.....	\$100,000.00
Amount paid in bonds of International and Great Northern Railroad Company, as follows:	
Delivered on June 13th, 1911....	\$990,000
Delivered on September 13th, 1911	9,346,500
Total bonds delivered.....	\$10,336,500

at distributive value of \$1,199,704,595 per bond .....	12,400,746.55
Balance paid in cash on September 13th, 1911 .....	144,253.45
	<hr/>
	\$12,646,000.00

4. The entire purchase price having thus been paid by the Purchaser, Frank C. Nicodemus, Jr., delivered to your Master Commissioner an assignment wherein and whereby he assigned, transferred and set over to the International & Great Northern Railway Company, a corporation organized under the laws of the State of Texas, its successors and assigns, all his right, title and interest under said decree or by virtue of his said bid and purchase and payment of the entire purchase price bid, in and to all the railroads, property, rights, franchises, functions, immunities and appurtenances thereunto belonging, rolling stock, property and premises of every kind and description, sold at said sale, including his rights to receive conveyance and possession thereof; and wherein and whereby he did direct that the deed or deeds directed by the said decrees to be made to the purchaser or purchasers at said sale, or his, its or their successors or assigns, conveying and releasing said property, as in said decree provided, he made and delivered to said International & Great Northern Railway Company, its successors and assigns, all of which will more fully appear from the original of said assignment executed by said Frank C. Nicodemus, Jr., attached hereto as Exhibit "A" and made a part of this report.

5. The Master Commissioner thereupon executed and acknowledged in forty counterparts a deed for said property, franchises, rights, privileges and immunities sold under and described in said decree of May 10, 1910, and said deed having also been executed and acknowledged by The Farmers Loan and Trust Company, Trustee; The International and Great Northern Railroad Company; Thomas J. Freeman, as Receiver of The International &



Great Northern Railroad Company; Frank C. Nicodemus, Jr., the purchaser, and International and Great Northern Railway Company, was delivered to the International and Great Northern Railway Company assignee of the purchaser pursuant to the provisions of said decree of May 10, 1910, and of the assignment of the purchaser aforesaid. Copy of said deed is executed and attached hereto as Exhibit "B" and made a part of this report.

6. The balance of funds in the hands of the Master Commissioner has been deposited to his order in the City National Bank of Dallas, Texas, to await the further orders of the Court, the same being applicable to the outstanding bonds and coupons secured by the aforesaid Mortgage of June 15th, 1881, not presented to the Master Commissioner as hereinbefore stated.

7. The several stipulations and agreements herein mentioned are exhibited herewith and are held by the Master Commissioner for such final disposition as the Court may direct. Respectfully submitted.

WILLIAM H. FLIPPEN,  
*Master Commissioner.*

Dallas, Texas, September 22, 1911.

#### EXHIBIT "A"

WITH REPORT OF MASTER COMMISSIONER,  
WILLIAM H. FLIPPEN,

Dated September 22, 1911.

FRANK C. NICODEMUS, JR.,

To

INTERNATIONAL & GREAT NORTHERN RAILWAY COMPANY.

ASSIGNMENT OF BID.

Dated August 28th, 1911.

KNOW ALL MEN BY THESE PRESENTS, That:  
WHEREAS in a certain cause pending in the Circuit Court of the United States for the Northern District of Texas, wherein the Farmers Loan and Trust Company, trustee, is complainant and International and Great Northern Railroad Company and others are defendants,

a decree of foreclosure and sale was entered by the said court on or about the 10th day of May, 1910; and

WHEREAS, by said decree of said Circuit Court of the United States for the Northern District of Texas in said cause therein pending, it was, among other things, adjudged and decreed that International and Great Northern Railroad Company pay or cause to be paid, within ten days after the entry of said decree, certain amounts therein found to be due under the Second Mortgage of International and Great Northern Railroad Company dated June 15, 1881, made to said The Farmers' Loan and Trust Company, as Trustee, and that, in default of such payment by said Railroad Company or by some one claiming under it or for its account, within the time fixed as aforesaid, the mortgaged premises and franchises should be sold, as provided in said foreclosure decree, by William H. Flippen, the Master Commissioner appointed by said decree, at public auction, to the highest bidder or bidders, at the passenger station of International and Great Northern Railroad Company in the City of Palestine, Anderson County, State of Texas, on a day or days to be fixed by the said Master Commissioner, after giving notice of said sale as in said decree provided; and

WHEREAS neither said International and Great Northern Railroad Company nor anyone claiming under it nor anyone for its account, did, within the time fixed or at any other time make payment of the sums so decreed to be payable, or any part thereof; and

WHEREAS in causes ancillary to said cause, between the same parties and pending respectively in the Circuit Courts of the United States for the Southern District of Texas, the Eastern District of Texas and the Western District of Texas, a decree was entered by each of said courts on the following dates respectively, to-wit, in the Circuit Court of the United States for the Southern District of Texas, on or about June 25, 1910; in the Circuit Court of the United States for the Eastern District of Texas; on or about June 27, 1910; and in the Circuit

Court of the United States for the Western District of Texas, on or about June 29, 1910; by each of which said decrees it was, among other things, adjudged and decreed that the decree rendered and pronounced by the Circuit Court of the United States for the Northern District of Texas be rendered and pronounced as the decree of said courts respectively in said ancillary causes; and;

WHEREAS the said Master Commissioner, in pursuance of said decrees, due notice having been given as therein prescribed and according to law, did duly sell, at public auction, at the passenger station of International and Great Northern Railroad Company in the City of Palestine, Anderson County, State of Texas, on the 13th day of June, 1911, all and singular the railroads, property, rights, franchises, functions, immunities and appurtenances to the same belonging, rolling stock, property and premises of every kind and description covered by and embraced in said Second Mortgage of International and Great Northern Railroad Company and in said decrees described, and thereby directed to be sold, to Frank C. Nicodemus, Jr., at and for the sum of twelve million six hundred and forty-five thousand dollars, he being the highest bidder for said property at said sale and having duly and seasonably qualified as a bidder thereat, as required by said decrees in that behalf; and

WHEREAS the said Master Commissioner did thereafter duly make and file his report of said sale, which report and the sale therein reported, have been, upon due notice and by orders of court entered in every of said causes, duly confirmed; and

WHEREAS the said Frank C. Nicodemus, Jr., has, in all respects to the date of these presents, complied with the provisions of said decrees of foreclosure and sale, and has made payment of the entire amount bid for the property sold; and

WHEREAS in said decree it is, among other things, provided that, on payment by the purchaser or purchasers, his, its or their successors or assigns, of the entire amount

bid at the sale of said property, said purchaser or purchasers, his, its or their successors or assigns, shall be entitled to receive a deed of conveyance and bill of sale of the property purchased from the Master Commissioner and from other parties to said cause, as in said decrees provided, and to receive possession of the property so purchased; and

WHEREAS International and Great Northern Railway Company, a corporation organized and existing under the laws of the State of Texas, is desirous of acquiring and is authorized to acquire all the right, title and interest of the purchaser at said foreclosure sale in and to the property sold thereat, including the right of the said purchaser to receive a deed or deeds, pursuant to said decrees, of the property purchased by him at said foreclosure sale;

NOW, THEREFORE, THESE PRESENTS WITNESS:

That the undersigned, Frank C. Nicodemus, Jr., in consideration of the premises and of the sum of One Dollar to him duly paid by International and Great Northern Railway Company, at or before the ensealing of these presents, the receipt whereof is hereby acknowledged, and of other good and valuable considerations, has sold, assigned, transferred and set over, and hereby does sell, assign, transfer, and set over, unto International and Great Northern Railway Company, its successors and assigns, all his right, title and interest under said decrees or by virtue of his said bid and purchase and payment of the entire purchase price bid, in and to all the railroads, property, rights, franchises, functions, immunities and appurtenances to the same belonging, rolling stock, property and premises of every kind and description, sold at said sale, including his right to receive conveyance and possession thereof.

TO HAVE AND TO HOLD the same unto the said International and Great Northern Railway Company, its successors and assigns, for its and their own use forever.

SUBJECT, however, to all the terms and reservations in said decrees set forth.

And said Frank C. Nicodemus, Jr., does hereby direct and request that the deed or deeds directed by the said decrees to be made to the purchaser or purchasers at said sale, or his, its or their successors or assigns, conveying and releasing said property as in said decrees provided, be made and delivered to said International and Great Northern Railway Company, its successors and assigns.

And These Presents Further Witness, that International and Great Northern Railway Company hereby accepts the foregoing assignment, and covenants and agrees to pay, satisfy and discharge, and to indemnify and forever hold harmless said Frank C. Nicodemus, Jr., his executors or administrators, from and against any and all loss, damages, expenses and liabilities which may have been incurred or which hereafter may be incurred by said Frank C. Nicodemus, Jr., or his executors or administrators, by reason of his said bid and the acceptance thereof (other than the payment of the purchase price bid), or by reason of any act or thing required, by said decrees or said orders confirming said sale, to be performed by the purchaser thereat (other than as aforesaid).

IN WITNESS WHEREOF, the undersigned, Frank C. Nicodemus, Jr., has hereunto set his hand and affixed his seal, and International and Great Northern Railway Company has caused these presents to be executed by its President or a Vice-President, and its corporate seal to be hereunto affixed, attested by its Secretary or an Assistant Secretary, this 28th day of August, 1911.

FRANK C. NICODEMUS, JR.,

*As Purchaser.*

INTERNATIONAL AND GREAT NORTHERN  
RAILWAY COMPANY,

By THOMAS J. FREEMAN,

*President.*

Attached to the Master's Final Report was a copy of the deed hereinafter copied, under paragraph 15 next.

13. Plaintiffs introduced the final report of Thomas J. Freeman, Receiver of the International & Great North-

ern Railroad Company, omitting figures and accounts attached, which report, less said omissions, is as follows:

**FINAL REPORT OF THOMAS J. FREEMAN, RECEIVER.**

Now comes Thomas J. Freeman, Receiver of the International & Great Northern Railroad Company, appointed by decree entered in the above entitled cause, and submits his final report and account as follows:

1. That on the 15th day of September, 1911, the International & Great Northern Railroad Company presented to the Receiver the original of a deed bearing date 13th day of September, 1911, duly executed and acknowledged by William H. Flippen, Master Commissioner, appointed by decree of May 10, 1910, and other parties provided by said decree, granting and conveying unto the International & Great Northern Railway Company, a corporation organized under the laws of the State of Texas, all the railroads, properties, rights, privileges and franchises of the International & Great Northern Railroad Company mentioned and described in the aforesaid decree entered in this cause on May 10, 1910, and which were sold by the said Master Commissioner pursuant to the terms of said decree on the 13th day of June, 1911, and requested that the Receiver should deliver possession of said railroads, property and franchises to said International & Great Northern Railway Company. Thereupon the Receiver, acting under and pursuant to the authority of said decree of May 10, 1910, did, on the morning of September 16th, 1911, deliver into the possession of the International & Great Northern Railway Company, grantee in said deed, all of the railroads, properties and franchises formerly owned by the International & Great Northern Railroad Company or by said Receiver, and then in his possession and control, and surrendered to said International & Great Northern Railway Company custody and control of same.

2. That as Receiver of this Court he has filed at the

end of each quarter since his appointment, statements and accounts showing the receipts and disbursements of his office, the last of such quarterly reports being filed for the quarter ending 30th day of June, 1911, and no exception has yet been filed to any of said accounts or reports; he returns and files herewith his final account from the period of July 1st, 1911, to the night of September 15, 1911, at which time his possession and control of said properties and franchises were terminated as aforesaid, and attaches hereto as a part of said final account copies of the quarterly accounts or reports heretofore filed as aforesaid.

3. The undersigned prays that his action in delivering possession of the railroads, properties and franchises as aforesaid may be confirmed; that his final account and report may be accepted, approved and confirmed by this court; that he be finally discharged as Receiver of this Court, and that his bond heretofore given as such Receiver may be duly vacated and released.

THOMAS J. FREEMAN, *Receiver*.

Sworn to and subscribed to before me, this the 22nd day of September, 1911.

(Seal.)

C. R. GOIAY,

Notary Public, County of Harris, State of Texas.

14. The decree of the United States Circuit Court confirming final report of the Master Commissioner, and the final report of the Receiver, was read in evidence, as follows:



UNITED STATES CIRCUIT COURT, NORTHERN  
DISTRICT OF TEXAS.

THE MERCANTILE TRUST COMPANY, TRUSTEE,  
THE FARMERS' LOAN AND TRUST COMPANY, TRUSTEE,  
GEORGE J. GOULD, ET ALS.,  
MARSHALL CAR WHEEL & FOUNDRY CO. ET AL.,  
*Complainants,*

VERSUS

CONSOLIDATED CAUSE

No. 2501.

INTERNATIONAL AND GREAT NORTHERN RAILROAD  
COMPANY,

*Defendant.*

THE FARMERS' LOAN AND TRUST COMPANY,  
*Complainant,*

VERSUS

EQUITY CAUSE

No. 2514.

INTERNATIONAL & GREAT NORTHERN RAILROAD COM-  
PANY, THE MERCANTILE TRUST COMPANY, AND  
THOMAS J. FREEMAN, AS RECEIVER OF THE INTER-  
NATIONAL & GREAT NORTHERN RAILROAD COMPANY,  
*Defendants.*

DECREE CONFIRMING FINAL REPORT OF WIL-  
LIAM H. FLIPPEN, MASTER COMMISSIONER,  
AND ACCOUNT AND REPORT OF THOMAS J.  
FREEMAN, RECEIVER.

On this day came William H. Flippen, Master Commis-  
sioner, appointed by decree entered in this cause on May  
10th, 1910, and filed his final report and exhibits "A"  
and "B" therewith showing the payment of the entire  
purchase price of the properties and franchises of the  
International & Great Northern Railroad Company sold  
under said decree and the delivery of the deed therefor  
to the International & Great Northern Railway Company,  
assignee of the purchaser at said sale.

And then came also Thomas J. Freeman, Receiver of  
the International & Great Northern Railroad Company  
heretofore appointed by order of this Court entered in

this cause and filed his final account and report as such Receiver.

And then came also International & Great Northern Railway Company, grantee of said railroads, properties and franchises and entered its appearance as party to this cause by Wilson & Dabney, its solicitors, and filed its motion in writing for a confirmation of the aforesaid report of said Master Commissioner and the aforesaid account and report of said Receiver and also filed a stipulation, agreement and consent in writing of the Farmers Loan & Trust Company, Trustee, by its solicitors, The International & Great Northern Railroad Company by its solicitors, The Mercantile Trust Company, Trustee, by its solicitors, Thomas J. Freeman as Receiver by his solicitor, Frank C. Nicodemus, Jr., by his solicitor and International & Great Northern Railway Company by its solicitors and George J. Gould et al. by their solicitor, accepting and approving said report of said Master Commissioner and accepting and approving said account and report of said Receiver, and consenting that the same be forthwith confirmed without being required to lie or remain in the Clerk's office for exceptions, and waiving the provisions of any rules of Court or decree in that behalf.

And it appearing to the Court from the final report of the Master Commissioner aforesaid that the entire purchase price bid for the railroads, properties, and franchises of the International & Great Northern Railroad Company sold on June 13th, 1911, as heretofore reported to the Court and confirmed, has been duly paid in full by the purchaser at said sale on September 13th, 1911, and that all the rights of the purchaser were duly assigned by instrument in writing filed with the Master Commissioner to the International & Great Northern Railway Company, a corporation organized under the laws of the State of Texas, and that a deed for said railroads, properties and franchises has been duly executed and acknowledged by said Master Commissioner and by all other

parties required to execute and acknowledge same by the terms of said decree of May 10th, 1910, as in said decree provided, and that said deed so executed and acknowledged has been duly delivered to the International & Great Northern Railway Company, assignee of the purchaser aforesaid;

And it further appearing to the Court from the report of Thomas J. Freeman, Receiver, this day filed as aforesaid that on request of the International & Great Northern Railway Company grantee of said deed the said Thomas J. Freeman, Receiver, did on September 16th, 1911, deliver to the International & Great Northern Railway Company, grantee as aforesaid, full possession of all of the railroads, properties and franchises, including money on hand and current assets formerly owned by the International & Great Northern Railroad Company or said Receiver, and then in the possession, custody or control of said Receiver;

And it further appearing to the Court that the final accounts of the said Thomas J. Freeman, Receiver, are in proper form it is therefore, on motion of the International & Great Northern Railway Company and by consent of the various parties of record to this cause as evidenced by the stipulation, agreement and consent in writing this day filed herein as aforesaid, adjudged, ordered and decreed as follows:

1. That the final report of William H. Flippen, Master Commissioner showing the payment in full of the purchase price for the railroads, properties and franchises of the International & Great Northern Railroad Company sold on June 13th, 1911, and the conveyance and transfer of same to the International & Great Northern Railway Company, assignee of the purchaser, which report has been this day filed as aforesaid, be and the same is in all respects approved and confirmed, and the action of the said Master Commissioner in accepting the settlement for the railroads, properties and franchises aforesaid, and executing, acknowledging and delivering

to International & Great Northern Railway Company, assignee of the purchaser, a deed of conveyance of said railroads, properties and franchises as in said report fully and detailed set forth is hereby in all respects approved and confirmed.

2. That the report of Thomas J. Freeman, Receiver, this day filed showing the delivery of possession of the railroads, properties and franchises in his possession or under his control, is in all respects confirmed, and the action of the said Thomas J. Freeman, Receiver, in delivering possession of the said railroads, properties and franchises formerly owned by the International & Great Northern Railroad Company or said Receiver, and then in his possession, custody or control, to the International & Great Northern Railway Company on September 16th, 1911, as set out in detail in said report, is in all respects approved and confirmed, and it is hereby ordered and adjudged that the said International & Great Northern Railway Company, grantee as aforesaid, shall take and hold said properties, released and discharged from the possession and custody of said Receiver and of this Court from and after the 16th day of September, 1911.

3. That the final accounts of Thomas J. Freeman, Receiver of this Court as aforesaid, this day filed, be and the same are hereby accepted, approved and confirmed.

4. And it now appearing to the Court that the duties of said Thomas J. Freeman, as a Receiver of this Court in this cause, have been fully performed and that proper and final accounts have been rendered by him of all property or monies coming into his control as such Receiver, and that said accounts have been duly confirmed, it is now adjudged, ordered and decreed that said Thomas J. Freeman, Receiver as aforesaid, be and he is hereby discharged as Receiver of this Court in this cause, and the said Thomas J. Freeman and any surety on any bond given by him as such Receiver are hereby discharged from further liability on or account of any such bond; and all of the railroads, properties and franchises of the

International & Great Northern Railroad Company or said Receiver formerly in the possession, custody or control of said Receiver, are hereby finally discharged from the possession, custody and control of said Receiver and of this Court.

A. P. McCORMICK,  
*United States Circuit Judge.*

Dated at Dallas, Texas, September 25th, 1911.

15. Next was introduced the deed of the Master Commissioner and others to the International and Great Northern Railway Company, as follows:

WILLIAM H. FLIPPEN, MASTER COMMISSIONER,  
AND OTHERS, TO  
INTERNATIONAL AND GREAT NORTHERN  
DEED

Under Decrees Foreclosing Second Mortgage of International and Great Northern Railroad Company.

Dated August 31, 1911.

INDENTURE made this 31st day of August, A. D. 1911, between

WILLIAM H. FLIPPEN, of Dallas, Texas, as Master Commissioner appointed by the decree entered in the causes hereinafter mentioned, by the Circuit Courts of the United States for the Northern District of Texas, the Southern District of Texas, the Eastern District of Texas, and the Western District of Texas, party of the first part;

INTERNATIONAL AND GREAT NORTHERN RAILROAD COMPANY, a corporation organized and existing under the laws of the State of Texas, party of the second part;

THOMAS J. FREEMAN, as Receiver of International and Great Northern Railroad Company, appointed by the aforesaid Circuit Courts of the United States in the causes hereinafter mentioned, party of the third part;

THE FARMERS' LOAN AND TRUST COMPANY, a corporation organized and existing under the laws of the State of New York, as trustee under a mortgage or deed of trust,

hereinafter mentioned, executed by International and Great Northern Railroad Company, bearing date June 15, 1881, party of the fourth part;

FRANK C. NICODEMUS, JR. (unmarried), of New York City, New York, party of the fifth part; and

INTERNATIONAL AND GREAT NORTHERN RAILWAY COMPANY, a corporation organized and existing under the laws of the State of Texas, party of the sixth part:

WHEREAS International and Great Northern Railroad Company, party hereto of the second part, was duly organized and existing under the laws of the State of Texas, and was duly authorized under the laws of said State to own, hold and operate the railroads and to own and hold the other properties (real and personal) hereinafter particularly described; and

WHEREAS said International and Great Northern Railroad Company, party hereto of the second part, on or about the 15th day of June, 1881, executed and delivered a mortgage or deed of trust (hereinafter called the Second Mortgage) bearing date June 15, 1881, whereby it conveyed and transferred to The Farmers' Loan and Trust Company, party hereto of the fourth part, as trustee, its railroads, property and franchises, in said mortgage described, to secure certain bonds of said Railroad Company (hereinafter called the Second Mortgage Bonds), of which there were issued and outstanding on May 10, 1910, bonds in the aggregate principal amount of \$10,391,000; and

WHEREAS, on or about April 20th, 1908, said the Farmers' Loan and Trust Company, as trustee as aforesaid, filed its bill in equity in the Circuit Court of the United States for the Northern District of Texas, against said International and Great Northern Railroad Company and others, and prayed, among other things, for the foreclosure of the Second Mortgage, and such proceedings were thereafter had in said cause that on the 10th day of May, 1910, a decree of foreclosure and sale was entered by said Circuit Court of the United States for the North-

ern District of Texas wherein and whereby it was adjudged and decreed, among other things, that said International and Great Northern Railroad Company, party hereto of the second part, pay or cause to be paid, within ten days after the entry of said decree, the amounts therein found to be due upon the Second Mortgage, and that, in default of such payment by said International and Great Northern Railroad Company or by someone claiming under it or for its account, within the time fixed as aforesaid the said mortgaged premises and franchises should be sold, as provided in said foreclosure decree; and

WHEREAS similar and ancillary causes had been brought and were pending between the same parties, in the Circuit Courts of the United States for the Southern District of Texas, the Eastern District of Texas and the Western District of Texas, in each of which Districts portions of the mortgaged premises, property and franchises were situated, and said decree entered by the Circuit Court of the United States for the Northern District of Texas on or about May 10, 1910, was subsequently adopted, rendered and pronounced as the decree of said other courts in said similar and ancillary causes therein pending, by decrees rendered by said Courts respectively on the following dates, namely, by the Circuit Court of the United States for the Southern District of Texas, on or about June 25, 1910; by the Circuit Court of the United States for the Eastern District of Texas, on or about June 27, 1910; and by the Circuit Court of the United States for the Western District of Texas, on or about June 29, 1910; to which said several suits and to the proceedings and record thereof in each of said Courts, including said Circuit Court of the United States for the Northern District of Texas, reference is hereby made; and

WHEREAS, by orders of said Circuit Courts of the United States for the Northern District of Texas, for the Southern District of Texas, for the Eastern District



of Texas and for the Western District of Texas, in said causes therein pending, Thomas J. Freeman, party hereto of the third part, was, prior to the entry of said decrees of foreclosure, appointed Receiver of all the railroads, property and franchises covered by and embraced in the Second Mortgage; and

WHEREAS neither said International and Great Northern Railroad Company nor anyone claiming under it nor anyone for its account did, within the time fixed as aforesaid or at any other time, make payment of the sums decreed to be payable, or of any part thereof; and

WHEREAS William H. Flippen, party hereto of the first part, was in and by said decree of the Circuit Court of the United States for the Northern District of Texas, and in and by said ancillary decrees of the United States Circuit Courts for the Southern District of Texas, for the Eastern District of Texas, and for the Western District of Texas, appointed Master Commissioner, to execute said decrees and make the sale therein provided to be made, and to execute and deliver a deed of conveyance and bill of sale of the property decreed to be sold to the purchaser or purchasers thereof, or his or their successors or assigns, upon the confirmation of such sale and completion of the payment of the entire purchase price, as in said decrees provided; and

WHEREAS said William H. Flippen, Master Commissioner as aforesaid, gave due public notice, in pursuance of said decrees and in accordance with law, of the time and place of the sale under said decrees and of the manner and terms under which said sale was to be conducted, and duly complied with all of the provisions of said decrees relating to said sale, and in pursuance of said decrees, at the place specified therein, to-wit, at the passenger depot of International and Great Northern Railroad Company in the City of Palestine in the County of Anderson, in the State of Texas, on the premises to be sold, did on the 13th day of June, 1911, sell at public auction to Frank C. Nicodemus, Jr., party hereto of the

fifth part, being the highest bidder at said sale and having duly qualified as a bidder thereat in the manner provided in said decrees, all and singular the railroads, property, rights, franchises, functions, immunities and appurtenances to the same belonging, rolling stock, property and premises of every kind and description, covered by or embraced in the Second Mortgage, as adjudged by said decrees and thereby directed to be sold, at and for the sum of Twelve Million, Six Hundred and Forty-five Thousand Dollars (\$12,645,000); and

WHEREAS, afterwards, said William H. Flippen, as Master Commissioner as aforesaid, did duly make and file his report of said sale, and by decree entered on or about June 14, 1911, by said Circuit Court of the United States for the Northern District of Texas, in said cause therein pending, the said report of sale was in all things ratified, approved and confirmed, and said sale to Frank C. Nicodemus, Jr., was confirmed, and made absolute and the said Frank C. Nicodemus, Jr., was adjudicated the purchaser of all the property, premises and franchises sold at said sale, subject, however, to all the terms of said decree of foreclosure entered by said Court on or about May 10, 1910, and subject also to the due performance by said purchaser, his successors and assigns, of all the obligations in said decree described; and

WHEREAS said Circuit Court of the United States for the Southern District of Texas, by decree entered in said cause therein pending on the 1st day of July, 1911, said Circuit Court of the United States for the Eastern District of Texas, by decree entered in said cause therein pending on the 7th day of July, 1911, and said Circuit Court of the United States for the Western District of Texas, by decree entered in said cause therein pending on the 11th day of August, 1911, respectively, adopted said decree of said Circuit Court of the United States for the Northern District of Texas confirming said sale, and in all things ratified, approved and confirmed said report of sale and confirmed and made absolute said sale to said Frank C. Nicodemus, and

WHEREAS the said Frank C. Nicodemus, Jr., party hereto of the fifth part, has in all respects complied with the provisions of said decrees of foreclosure and sale with reference to the payment of the amount of the bid made by him as aforesaid at said sale, and has paid or made settlement of the amount of his said bid as provided in said decrees; and

WHEREAS the said Frank C. Nicodemus, Jr., has duly assigned, transferred and set over unto International and Great Northern Railway Company, party hereto of the sixth part, all of his right, title and interest, as said purchaser, in and to the property sold to him as aforesaid, including his right to receive deeds of conveyance and bills of sale thereof, as prescribed in the aforesaid decrees:

NOW, THEREFORE, THIS INDENTURE WITNESSETH:

That the said William H. Flippen, as Master Commissioner, party hereto of the first part, in order to carry into effect the said sale made by him and in pursuance of the aforesaid decrees and in conformity with law, and in consideration of the premises and of the payment and settlement, as aforesaid, of the amount bid by the purchaser at said sale, to-wit, the sum of twelve million six hundred and forty-five thousand dollars, the receipt whereof is hereby acknowledged, and in further consideration of the obligations, undertakings and agreements hereinafter expressed and required by the terms of said decrees and by this Indenture to be performed, assumed, undertaken and discharged by the purchaser or purchasers at said sale, his or their successors and assigns, and which International and Great Northern Railway Company, party hereto of the sixth part, hereby assumes, has granted, bargained, sold, aliened, remised, released, conveyed, confirmed, assigned, transferred and set over, and by these presents does grant, bargain, sell, alien, remise, release, convey, confirm, assign, transfer and set over, unto International and Great Northern Railway Company, party hereto of the sixth part, and to its suc-

cessors and assigns, in fee simple and absolutely, all and singular the railroads, property, rights, franchises, functions, immunities and appurtenances to the same belonging, rolling stock, property and premises of every kind and description, covered by or embraced in the Second Mortgage of International and Great Northern Railroad Company, dated June 15, 1881, as adjudged by said decree and thereby directed to be sold, and particularly the following-described property, namely:

ALL and singular the lands, tenements and hereditaments of the International and Great Northern Railroad Company, whether owned at the date of the execution of the Second Mortgage of said company—namely, June 15, 1881—or thereafter acquired by it, including its lines of railroad in the State of Texas extending from the Town of Longview in the County of Gregg, in said State, through said county and through the Counties of Rusk, Smith, Cherokee, Anderson, Leon, Robertson, Milam, Williamson, Travis, Hays, Comal, Bexar, Medina, Frio, La Salle, Encinal and Webb, to Laredo in said last-mentioned County; and from the town of Mineola, in Wood County, to Troupe, in Smith County; and from the City of Palestine, in Anderson County, through the Counties of Houston, Trinity, Walker and Montgomery to Houston, in Harris County; and from the town of Spring, in Harris County, through the Counties of Montgomery, Waller, Grimes, Brazos, Robertson, Falls, McLennan, Limestone, Hill, Navarro, Ellis and Johnson to the City of Fort Worth, Tarrant County; with branches and branch lines from the town of Overton to the town of Henderson, in Rusk County, from the town of Round Rock to Georgetown, in Williamson County, from the town of Phelps to the town of Huntsville, in Walker County, from the City of Houston, in Harris County, to the town of Columbia, in Brazoria County, from Navesota, in Grimes County, to Madisonville, in Madison County, from Calvert Junction to Calvert in Robertson County, and from Waco Junction to East Waco, in Me-

Lennan County; also the railway and railway tracks and property appurtenant thereto, and certain tracts of land in and adjacent to the City of Houston, in Harris County, known as the Houston Belt Terminals; a total distance of about eleven hundred and six (1106) miles of completed railroad; also the trackage rights of said International and Great Northern Railroad Company from Houston, in Harris County, to Galveston, in Galveston County, Texas, over the railroad of the Galveston, Houston and Henderson Railroad Company of 1882, accorded to it by an agreement between said last-named Railroad Company and said International and Great Northern Railroad Company dated November 19, 1895; also all and singular the said International and Great Northern Railroad Company's railroads, tracks, rights-of-way, main lines, branch lines, superstructures, depots, depot grounds, station houses, engine houses, car houses, freight houses, wood houses, sheds, watering places, workshops, machine shops, bridges, viaducts, culverts, fences and fixtures, together with all its leases, leasehold interests, leased or hired lands, leased or hired railroads and all its locomotives, tenders, cars, carriages, coaches, trucks, and other rolling stock, its machinery, tools, weighing scales, turntables, rails, wood, coal, oil, fuel, equipment, furniture and material of every name, nature and description, together with all of its corporate rights, privileges, immunities and franchises, whether held at the time of the execution of said Second Mortgage of said company—namely, on June 15, 1881—or thereafter acquired by it (including the franchise to be a corporation), and all the tolls, fares, freights, rents, income, issues and profits thereof, and all the reversion and reversions, remainder and remainders thereof, as well as all property purchased or held by the Receiver in said causes, including any balance of cash, credits and income which may remain in his hands after application thereof as in said decree of the Circuit Court of the United States for the Northern District of Texas in said

cause therein pending provided, or, as has been or may hereafter be directed by said Court in said cause, to the payment of receivership obligations and charges, and to the payment of claims which may be allowed by said Court in said cause against the same, with priority over said Second Mortgage dated June 15, 1881; excepting, however, all land grants, lands, land certificates, town lots and town sites owned or controlled by said International and Great Northern Railroad Company at the date of the execution of said Second Mortgage, namely, on June 15, 1881, or at any time prior to said date, which were not on the first day of November, 1879, or thereafter up to the said 15th day of June, 1881, actually occupied and in use by the said Railroad Company and necessary to the operation and maintenance of its lines of railroad; and excepting further, any portions of said premises and property which may have been released from the lien and operation of said Second Mortgage dated June 15, 1881, and the releases for which have been duly filed for record in the proper counties.

TO HAVE AND TO HOLD all and singular the above-mentioned and described railroads, property, rights, franchises, functions, immunities and appurtenances to the same belonging, rolling stock, property and premises of every kind and description, hereinbefore mentioned and conveyed, or intended to be conveyed, unto said International and Great Northern Railway Company, party hereto of the sixth part, being a corporation organized and existing under and pursuant to the laws of the State of Texas, and to its successors and assigns forever.

SUBJECT, however, to the mortgage dated November 1, 1879, made by International and Great Northern Railroad Company to John S. Kennedy and Samuel Sloan, as trustees, and known as said Railroad Company's First Mortgage, and subject, also, to any unpaid indebtedness or liability contracted or incurred by said Railroad Company in the operation of its railroad which said Circuit Court of the United States for the Northern District of

Texas may hereafter order or decree in said cause therein pending to be prior or superior to the lien of said Second Mortgage of said International and Great Northern Railroad Company, dated June 15, 1881, except such as shall be paid or satisfied out of the income of the property in the hands of the Receiver in said cause, under orders of said Court entered or to be entered in said cause, and subject, also, to such debts, claims, liens and demands of whatsoever nature heretofore incurred or created, or which may hereafter be incurred or created, by the Receiver in said cause under orders of said Court heretofore or hereafter entered in said cause and which have not been or shall not hereafter be paid by the Receiver, under orders of said Court heretofore or hereafter entered in said cause, or by other parties in said cause, or out of the proceeds of sale as directed in said decrees, and SUBJECT also, as to certain specific portions of said property and premises—namely, the San Antonio Passenger Station, the Colorado Bridge, and certain equipment—to the existing recorded mechanic's lien, the First Mortgage Colorado Bridge Bonds and the unsatisfied recorded equipment liens, specifically and respectively affecting the same; and SUBJECT, also, to all of the terms and reservations of each of the said decrees of foreclosure and sale and of the decrees of Court confirming said sales, above mentioned, whether in this Indenture expressly referred to or not.

AND THIS INDENTURE FURTHER WITNESSETH:

That International and Great Northern Railroad Company, party hereto of the second part, for and in consideration of the sum of one dollar, lawful money of the United States, the receipt of which is hereby acknowledged, and pursuant to the said decrees and by way of confirmation and further assurance of title to the said International and Great Northern Railway Company, party hereto of the sixth part, of all and singular the property and premises, and every part and parcel thereof, of every kind and description, wherever situated, cov-



ered by or embraced in said Second Mortgage of International and Great Northern Railroad Company, party hereto of the second part, dated June 15, 1881, as adjudged by said decrees, and thereby directed to be sold, has granted, bargained, sold, aliened, remised, released, conveyed, confirmed, assigned, transferred and set over, and by these presents does grant, bargain, sell, alien, remise, release, convey, confirm, assign, transfer and set over unto International and Great Northern Railway Company, party hereto of the sixth part and to its successors and assigns forever, all the said railroads, property, rights, franchises, functions, immunities and appurtenances to the same belonging, rolling stock, property and premises of every kind and description, covered by and embraced in said Second Mortgage of International and Great Northern Railroad Company, dated June 15th, 1881, as adjudged in said decrees and thereby directed to be sold.

TO HAVE AND TO HOLD all and singular the said railroads, property, rights, franchises, functions, immunities and appurtenances to the same belonging, rolling stock, property and premises (real and personal) unto International and Great Northern Railway Company, the party of the sixth part hereto, its successors and assigns forever.

**AND THIS INDENTURE FURTHER WITNESSETH:**

That Thomas J. Freeman, as Receiver as aforesaid, party hereto of the third part, for and in consideration of the premises and of the sum of one dollar, lawful money of the United States to him in hand paid, the receipt whereof is acknowledged, and pursuant to said decrees and by way of confirmation and further assurance of title to said International and Great Northern Railway Company, party hereto of the sixth part, of all and singular the property and premises, and every part and parcel thereof, of every kind and description, wherever situated, covered by or embraced in said Second Mortgage of International and Great Northern Railroad Com-

pany, dated June 15, 1881, as adjudged by said decrees, and thereby directed to be sold, has conveyed, released and confirmed, assigned, and by these presents does convey, release and confirm, unto International and Great Northern Railway Company, party hereto of the sixth part, and to its successors and assigns forever, all the said railroads, property, rights, franchises, functions, immunities and appurtenances to the same belonging, rolling stock, property and premises of every kind and description covered by and embraced in said Second Mortgage, as adjudged in said decrees and thereby directed to be sold, and specifically all right, title and interest of said Receiver in and to all rolling stock and equipment acquired by said Receiver under and in pursuance of an order of the Circuit Court of the United States for the Northern District of Texas, entered on November 4, 1908, in the above-mentioned cause therein pending.

TO HAVE AND TO HOLD all and singular the said railroads, property, rights, franchises, functions, immunities and appurtenances thereunto belonging, rolling stock, property and premises (real and personal) unto the said party of the sixth part hereto, its successors and assigns forever.

SUBJECT, however, as to said rolling stock and equipment to the outstanding equipment notes of said Receiver issued by him pursuant to the aforesaid order of said Court; and International and Great Northern Railway Company hereby, for itself, its successors and assigns, covenants and agrees to and with said Receiver, party hereto of the second part, to assume payment of all unpaid equipment notes issued by said Receiver pursuant to the terms of the order of said Court above mentioned, dated November 4, 1908, and outstanding at the date of the delivery of this Indenture, and to perform all of the obligations of said Receiver under the agreement referred to in said order of court.

**AND THIS INDENTURE FURTHER WITNESSETH :**

That The Farmers' Loan and Trust Company, as trustee under said Second Mortgage of International and Great Northern Railroad Company, dated June 15, 1881, described in the said decrees, party hereto of the fourth part, in consideration of the premises and of the payment of the amount of the bid as aforesaid by the said purchaser at the said Master Commissioner's sale and of the assignment to the party of the sixth part of all the right, title and interest of said purchaser in and to the property sold at said sale, and in pursuance of said decrees, and by way of confirmation and further assurance of title to the said party of the sixth part of all and singular the property and premises and every part and parcel thereof, of every kind and description, wherever situated, covered by or embraced in said Second Mortgage of International and Great Northern Railroad Company, dated June 15, 1881, as adjudged by said decrees and thereby directed to be sold, has transferred and released, and does by these presents transfer and release, to the said International and Great Northern Railway Company, party hereto of the sixth part, its successors and assigns forever, all the right, title and interest of said party of the fourth part under said Second Mortgage of International and Great Northern Railroad Company, dated June 15, 1881, and all its other right, title and interest, in and to any and all of the said railroads, property, rights, franchises, functions, immunities and appurtenances to the same belonging, rolling stock, property and premises of every kind and description covered by and embraced in said Second Mortgage as adjudged in said decrees and by said decrees directed to be sold.

TO HAVE AND TO HOLD all and singular the said railroads, property, rights, franchises, functions, immunities and appurtenances thereunto belonging, rolling stock, property and premises unto said party of the sixth part hereto, its successors and assigns forever.

**AND THIS INDENTURE FURTHER WITNESSETH:**

That said Frank C. Nicodemus, Jr., party hereto of the fifth part, the purchaser at said sale thereof of the property sold under the said decrees of foreclosure and hereinafter by this Indenture conveyed by the said Master Commissioner to International and Great Northern Railway Company, the party of the sixth part, having for a valuable consideration, the receipt of which is hereby acknowledged, assigned, transferred and set over, as hereinafter recited, unto the party of the sixth part, all of his right, title and interest in and to the property so sold, including his right to receive the conveyance thereof, and all his other rights under said decrees in respect of said property or by virtue of his said bid therefor and purchase thereof, does, in consideration of the sum of one dollar, lawful money of the United States, the receipt of which is acknowledged, hereby join in the execution of this Indenture for the purpose of releasing and confirming, and he does hereby release and confirm, unto said International and Great Northern Railway Company, party hereto of the sixth part, its successors and assigns forever, all of his right, title and interest in and to the property sold at said sale and purchased by him, as aforesaid, and by this Indenture conveyed, to the party of the sixth part and each and every part thereof.

TO HAVE AND TO HOLD unto the party of the sixth part its successors and assigns forever.

Said International and Great Northern Railway Company hereby, for itself, its successors and assigns, covenants and agrees to and with said Frank C. Nicodemus, Jr., party hereto of the fifth part, to perform, satisfy and discharge each and all of the terms of the decrees of foreclosure and sale in this Indenture recited, on the part of the purchaser at the sale thereunder to be performed, satisfied and discharged (other than the payment of the purchase price bid which has been made by said Nicodemus), and as his assignee, to enter its appearance in said causes, and to indemnify and forever hold harmless said

Frank C. Nicodemus, Jr., party hereto of the fifth part, his executors and administrators, from and against any and all loss, damages, expenses and liabilities whatsoever which may have been incurred or which hereafter may be incurred by said Frank C. Nicodemus, Jr., or his executors or administrators, by reason of the bid of said Frank C. Nicodemus, Jr., at the above-mentioned sale and of the acceptance of said bid, or by reason of any acts or things required by said decrees or orders of court to be assumed or performed by said Frank C. Nicodemus, Jr., as such purchaser or by it, said Railway Company, as his assignee.

No personal covenant or liability shall be implied against the parties of the first, third, fourth or fifth parts to this Indenture, or any of them, by reason of the execution of this deed or of any recital or covenant herein contained.

In order to facilitate the recording of this Indenture, forty originals thereof have been executed, acknowledged and delivered by the respective parties, all or any one or more of which may be recorded, and each of which, when executed, acknowledged and delivered, shall be deemed an original, and all collectively one instrument.

IN WITNESS WHEREOF, each of the said parties hereto of the first, third and fifth parts has hereunto set his hand and seal, and each of the parties of the second, fourth and sixth parts has caused these presents to be signed by its President or a Vice-President, and its corporate seal to be hereunto affixed and attested by its Secretary or an Assistant Secretary, the day and year first above written.

(SEAL.)

WILLIAM H. FLIPPEN,  
As Master Commissioner.  
INTERNATIONAL AND GREAT NORTHERN  
RAILROAD COMPANY,  
by

(Corporate Seal.)

FRANK J. GOULD,  
Vice-President.

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Attest:

H. B. HENSON,  
Assistant Secretary.

THOMAS J. FREEMAN,  
As Receiver.

THE FARMERS' LOAN AND TRUST COMPANY,  
by

SAM SLOAN,  
Vice-President.

(Corporate Seal.)

Attest:

A. V. HEELY,  
Secretary.

FRANK C. NICODEMUS, JR.,  
As Purchaser.

(SEAL.)

INTERNATIONAL AND GREAT NORTHERN  
RAILWAY COMPANY,

by

(Corporate Seal.)

GEORGE H. TAYLOR,  
Vice-President.

Attest:

H. B. HENSON,  
Assistant Secretary.

16. Next was introduced the charter of the International and Great Northern Railway Company as follows:

## ARTICLES OF INCORPORATION

OF

## INTERNATIONAL AND GREAT NORTHERN RAILWAY COMPANY.

Know All Men by These Presents:

That we, the undersigned, whose names are hereunto subscribed, being the purchaser at the sale hereinafter mentioned, and the associates of such purchaser, do hereby certify that we have, under and in pursuance of Article 4550 of Chapter 11 of Title 94 of the Revised Statutes of Texas, as amended by an act of the Legislature of the State of Texas, approved September 1, 1910, associated ourselves together to form a corporation for the purpose of acquiring, owning, maintaining and operating the rail-

road, property and franchises sold at said sale and hereinafter described; and we do further certify, pursuant to the provisions of Chapter 1 of Title 94 of the Revised Statutes of Texas, as follows:

**FIRST.** The name of this corporation shall be International and Great Northern Railway Company.

**SECOND.** This corporation is organized for the purpose of acquiring, owning, maintaining and operating the railroads heretofore forming the International and Great Northern Railroad and purchased by Frank C. Nicodemus, Jr., one of the undersigned, at a sale thereof, held on June 13, 1911, pursuant to a decree of foreclosure and sale entered on or about May 10, 1910, in certain judicial proceedings brought for the foreclosure of a mortgage of the International and Great Northern Railroad Company known as its second mortgage, said decree having been made and entered by the United States Circuit Court for the Northern District of Texas, in a certain cause therein pending, wherein The Farmers' Loan and Trust Company, Trustee, was complainant and International and Great Northern Railroad Company and others were defendants, which said decree was subsequently adopted and entered, in certain ancillary causes between the same parties, by the Circuit Courts of the United States for the Southern District of Texas, the Eastern District of Texas and the Western District of Texas; said railroads being described as follows, to-wit:

All and singular the lines of railroad in the State of Texas formerly belonging to the International and Great Northern Railroad Company, extending from the town of Longview, in the County of Gregg in said State, through said county and through the Counties of Rusk, Smith, Cherokee, Anderson, Leon, Robertson, Milam, Williamson, Travis, Hays, Comal, Bexar, Medina, Frio, La Salle, Encinal and Webb, to Laredo in said last mentioned county; and from the town of Mineola, in Wood County, to Troupe, in Smith County; and from the City of Palestine, in



Anderson County, through the Counties of Houston, Trinity, Walker and Montgomery to Houston, in Harris County; and from the town of Spring, in Harris County, through the Counties of Montgomery, Waller, Grimes, Brazos, Robertson, Falls, McLennan, Limestone, Hill, Navarro, Ellis and Johnson to the City of Fort Worth, Tarrant County; with branches and branch lines from the town of Overton to the town of Henderson, in Rusk County, from the town of Round Rock to Georgetown, in Williamson County, from the town of Phelps to the town of Huntsville, in Walker County, from the City of Houston, in Harris County, to the town of Columbia, in Brazoria County, from Navasota, in Grimes County, to Madisonville, in Madison County, from Calvert Junction to Calvert, in Robertson County, and from Waco Junction to East Waco, in McLennan County; including also the railway and railway tracks and property appurtenant thereto, and certain tracts of land in and adjacent to the City of Houston, in Harris County, known as the Houston Belt Terminals; a total distance of about eleven hundred and six (1106) miles; and including also the trackage rights formerly belonging to said International and Great Northern Railroad Company from Houston, in Harris County, to Galveston, in Galveston County, Texas, over the railroad of the Galveston, Houston and Henderson Railroad Company of 1882, under an agreement between said railroad companies dated November 19, 1895.

This corporation shall have all of the powers and privileges conferred by the laws of the State of Texas upon chartered railroads, including the power to construct and extend.

**THIRD.** The place at which shall be established and maintained the principal business office, the public office and general offices of this corporation is the City of Houston, in Harris County, State of Texas.

FOURTH. The time of the commencement of this corporation shall be the date of the filing of these articles in the office of the Secretary of State of the State of Texas, and the period of the continuation of this corporation shall be fifty (50) years from the time of its commencement.

FIFTH. The amount of the capital stock of this corporation shall be Eleven Million Five Hundred Thousand Dollars (\$11,500,000).

SIXTH. The names and places of residence of the several persons forming the association for incorporation are as follows:

Name.	Residence.
Frank C. Nicodemus, Jr.....	New York City, N. Y.
Horace Booth.....	Palestine, Texas.
Willis H. Cope.....	Houston, Texas.
Samuel B. Dabney.....	Houston, Texas.
Thomas J. Freeman.....	Houston, Texas.
Alfred R. Howard.....	Palestine, Texas.
Frank T. Richardson.....	Houston, Texas.
William L. Maury.....	Palestine, Texas.
Milton L. Morris.....	Houston, Texas.
Dougald J. Price.....	Palestine, Texas.

SEVENTH. The names of the members of the first Board of Directors of this corporation are as follows:

Horace Booth.	Alfred R. Howard.
Willis H. Cope.	Frank T. Richardson.
Samuel B. Dabney.	William L. Maury.
Thomas J. Freeman.	Milton L. Morris.

Dougald J. Price.

The government of this corporation and the management of its affairs shall be vested in a board of directors composed of nine persons: a president, one or more vice-presidents and such other officers and agents as this corporation by its by-laws may prescribe.

EIGHTH. The number and amount of the shares of the capital stock of this corporation shall be one hundred

and fifteen thousand shares, of the par value of \$100 each.

Of such capital stock fifty thousand shares shall be issued as preferred stock, and sixty-five thousand shares shall be issued as common stock, but the amount of preferred or common stock, or both, may be increased from time to time in the manner provided by the laws of the State of Texas.

No dividends shall be paid in any fiscal year upon the common stock of this corporation until and unless dividends to the amount of five per cent. for the same fiscal year shall have been set apart for or paid upon the preferred stock of this corporation; but such dividends on the preferred stock shall be non-cumulative. After the payment or the setting apart in any one fiscal year of dividends upon the preferred stock to the amount of five per cent., no further dividends in the same fiscal year shall be set apart for or paid upon the preferred stock until and unless dividends to the amount of five per cent. for the same fiscal year shall be set apart for or paid upon the common stock; but after dividends to the amount of five per cent. in any one fiscal year shall have been set apart for or paid upon both preferred stock and common stock, all stock, without priority or distinction as between the different classes thereof, shall share *pro rata* in any further dividends for that year.

In the event of any liquidation, dissolution or winding up (whether voluntary or involuntary) of this corporation, the holders of the preferred stock shall be entitled to be paid in full, out of the assets of this corporation, the par amount of their shares and all dividends thereon declared and unpaid, before any amount shall be paid out of said assets to the holders of the common stock; but, after payment in full to the holders of the common stock of the par amount of their common stock and all dividends thereon declared and unpaid, holders of both classes of stock, without priority or distinction as between the different classes thereof, shall be entitled to participate, *pro rata*, in the assets of this corporation.

WITNESS our hands this 8th day of August, A. D. 1911.

FRANK C. NICODEMUS, JR.,  
HORACE BOOTH,  
WILLIS H. COPE,  
SAMUEL B. DABNEY,  
THOMAS J. FREEMAN,  
ALFRED R. HOWARD,  
FRANK T. RICHARDSON,  
WILLIAM L. MAURY,  
MILTON L. MORRIS,  
DOUGALD J. PRICE.

STATE OF TEXAS,  
COUNTY OF HARRIS.—SS. :

Before me, H. B. Mansfield, a notary public in and for the aforesaid State and County duly qualified, personally appeared Frank C. Nicodemus, Jr., Horace Booth, Willis H. Cope, Samuel B. Dabney, Thomas J. Freeman, Alfred R. Howard, Frank T. Richardson, William L. Maury, Milton L. Morris and Dougald J. Price, known to me to be all of the persons whose names are subscribed to the foregoing instrument, and each acknowledged to me that he executed the same for the purposes and considerations therein contained and expressed.

Given under my hand and seal of office this 8th day of August, A. D. 1911. My commission expires May 31st, 1913.

H. B. MANSFIELD,  
*Notary Public.*

(SEAL)

STATE OF TEXAS,  
COUNTY OF HARRIS.—SS. :

Before the undersigned authority, within and for said County and State, on this day came and personally appeared Thomas J. Freeman, Alfred R. Howard and William L. Maury, three of the directors named in the foregoing and attached Articles of Incorporation of International and Great Northern Railway Company, all of whom are personally known to me, and who being by me severally sworn, as the law provides, on their oaths, sev-

erally depose and say that the amount of One Thousand Dollars (\$1,000) per mile for every mile of road of said Company has been in good faith subscribed, that five per cent. (5%) of the amount subscribed has been actually paid to the directors named in said Articles of Incorporation, and that the corporators named in said Articles are all subscribers to said capital stock.

THOMAS J. FREEMAN,  
ALFRED R. HOWARD,  
WILLIAM L. MAURY.

Subscribed and sworn to before me, at my office in the City of Houston, Harris County, Texas, this 8th day of August, A. D. 1911. My commission expires May 31st, 1913.

H. B. MANSFIELD,  
*Notary Public.*

(SEAL)

ATTORNEY GENERAL'S OFFICE,  
Austin, Texas, August 10th, 1911.

CERTIFICATE.

This is to certify that the original Articles of Incorporation of International and Great Northern Railway Company were submitted to me on the 10th day of August, 1911, and having carefully examined the same I find them in accordance with the provisions of Chapter 1 of Title 94 of the Revised Statutes of Texas and any and all amendments thereto, and not in conflict with the laws of the United States or of the State of Texas.

J. P. LIGHTFOOT,  
*Attorney General.*

Filed in the office of the Secretary of State this 10th day of August, 1911.

C. C. McDONALD,  
*Secretary of State.*

DEPARTMENT OF STATE.

I, John L. Wortham, Secretary of State of the State of Texas, do hereby certify that the foregoing is a true copy of the charter of International & Great Northern Railway Company, with the endorsements thereon, as now

appears of record in this Department, in Book G, pages 265-6-7 and 8, Record of Railroad Charters.

In testimony whereof I have hereunto signed my name officially and caused to be impressed hereon the Seal of State at my office in the City of Austin, Texas, this the 20th day of January, A. D. 1913.

JOHN L. WORTHAM,  
*Secretary of State*

(SEAL)

17. A. R. Howard was called by the plaintiffs, and testified that he lives at Houston, Texas, and is Secretary and Treasurer of defendant and official custodian of the minutes and records and stock books of the H. & G. N., of the International, and of the I. & G. N. R. R. Companies, and has them with him.

The plaintiffs then identified by the witness and offered in evidence from the minutes of the H. & G. N. R. R. Co. its by-laws approved December 4th, 1871, and contained on pages 73 to 82, and which are as follows:

#### ART. ONE.

Section 1. The management and direction of the affairs of the Houston & Great Northern Railroad Company, of the State of Texas, shall be vested in a Board of nine directors, each of whom shall be at the time of his election and during the continuance of his term of office a *bona fide* owner of at least five shares of the capital stock, upon which all assessments have been paid.

Sec. 2. At the first meeting of the Board of Directors after such election they shall elect from their own number a President and Vice President for the ensuing year; they shall also appoint a Treasurer, a Secretary, a financial agent, chief engineer and general agent, a register of transfer of stock and bonds, a General Supt., and such other officers and agents as they might deem necessary for the transaction of the business of the Company.

Sec. 3. In addition to the above, the Board of Directors may from time to time appoint such other officers, agents and assistants as the business of the company

may require, whose duty shall be defined by, and who shall hold their respective appointments during the pleasure of, the Board.

Sec. 4. The salaries of the foregoing officers and all others shall be fixed by the Board of Directors, or the Executive Committee, and all salaries shall be paid monthly.

Sec. 5. All officers and agents of the company, who by virtue of their office, shall receive or disburse money on account of the company, shall give bond in such amount and with such security as shall be required by the executive committee for the faithful performance of their duty.

#### ART. TWO.

Sec. 1. The Annual Meeting of the stockholders of the company shall be held at the principal office in the City of Houston on the 1st Monday of December of each year, which shall be a day for the transaction of business by the stockholders. At which time the annual election for directors shall take place. Should the stockholders owning a majority of the stock fail to meet or be represented on that day, the directors may appoint another day for said election, and an election held on the day appointed shall be valid. Directors elected under the provisions hereof shall hold office until their successors are qualified and chosen. At each general or annual meeting a statement of the affairs of the company shall be submitted to the stockholders by the President and Board of Directors.

Sec. 2. A special meeting of the stockholders may be called at any time the Board of Directors may deem expedient, also upon a written request stating the object of the call, signed by the holders of one-fourth of the whole number of shares of stock, and addressed to the board of directors; notice of all such special meetings shall be given by the Secretary by advertisement in the newspapers or otherwise, as shall be directed by the board of directors, which notice shall specify the time and place of such meeting, a copy of which shall be delivered or duly



mailed to each stockholder, whose postoffice address is known in time for such meeting.

Sec. 3. At all annual and special meetings of the stockholders, the President of the company shall, when present, officiate as chairman, unless otherwise determined by such meeting, and the Secretary of the company shall in like manner act as clerk thereof.

Sec. 4. Full minutes of the proceedings of the stockholders at their several meetings shall be kept by the Secretary and recorded by him in a suitable book to be provided for that purpose, and all resolutions adopted by the stockholders shall be by him duly communicated to the Board of Directors.

Sec. 5. The Board of Directors shall hold an annual meeting on the first Monday of December in each year; special meetings of the directors may be called at any time by the President and shall be called by him whenever requested by two members; but in case that a meeting is convened to act upon matters of importance due and timely notice shall be given to every director, setting forth clearly the object of the meeting and the business to be considered.

Sec. 6. A majority of the members of the board of directors shall be necessary to constitute a quorum, which majority, whenever and wherever convened, shall have full power to transact business, but a less number of the members may adjourn from time to time until a quorum shall be convened.

Sec. 7. At all meetings of the board, the President, if present, shall officiate as Chairman, and in case of his absence the Vice President shall officiate in his stead, and in the absence or inability of both of these officers one of the directors present shall be chosen to preside as chairman of such meeting.

Sec. 8. The Secretary shall be present at all meetings of the board, but in case of his absence the board may choose a secretary pro-tem for that meeting.

Sec. 9. Full minutes of all the proceedings of the board shall be entered by the secretary in a book to be kept for that purpose, and all orders and resolutions adopted shall be by him forthwith communicated to the parties interested.

Sec. 10. The business of the company, during the intervals of the meetings of board of directors, shall be transacted by the executive officers. But all contracts, not of immediate necessity for the proper management of the business of the company and not otherwise provided for, to be subject to the approval of the board or executive committee.

Sec. 11. The executive committee and all select committees shall be elected by the board of directors from their own number, and the executive committee shall be organized at the first meeting of the board of directors after each annual meeting of the stockholders. The President shall be ex-officio a member of the executive committee.

Sec. 12. The executive committee shall meet at such time and places as they may appoint. It shall consist of five members, a majority of whom shall constitute a quorum to do business. It may appoint its own chairman, and it shall be vested with all the powers of the full board of directors, during the intervals of the meetings thereof, subject to the ratification of their action by said board at the next stated meeting, all questions and propositions submitted for their action shall be decided by a majority of the committee, and in case of a tie the chairman shall have a casting vote.

Sec. 13. The meetings of the executive committee shall be attended by the Secretary or assistant secretary when required, who shall keep the minutes of their proceedings, which shall be reported to the board at the first stated or special meeting thereafter, and shall be subject to their approval.

Sec. 14. The duties of the executive committee shall be

as follows: To have supervision of all such business as is not entrusted to special committees, supervision of all receipts and disbursements, and to devise the necessary ways and means to meet all payments as they become due; they shall have the supervision of the books, accounts and vouchers, with power to direct as to the manner in which such books and accounts shall be kept.

Sec. 15. There shall be a register of stocks and bonds kept in the City of New York by such officers, persons or corporation as may be appointed by the board, and such appointee for this purpose shall keep the accounts of the bonds and stock registered and transferred in such form as the executive committee may approve.

Sec. 16. All books, accounts, letters or papers appertaining to the business of the company in possession of any officer, agent or employe of the company, shall at all times be open and subject to the examination of any member of the board of directors, and also the executive officers, and all letters and other papers so appertaining, received by the Secretary or Treasurer, shall be submitted when required to the members of the board and to the President.

#### ART. THREE.

##### *Executive Officers.*

Section 1. The President shall be the chief executive officer of the company, and shall have power to call special meetings of the board of directors, at such times and places as may be designated by him, and it shall be his duty to call such meetings on the written request of any two members of the board, and he shall preside at all meetings of the directors when present thereat, sign all certificates of stocks, and deeds and contracts requiring the seal of the company, and shall have the general management and supervision of the affairs of the company. He shall see that the by-laws, rules and regulations of the board are faithfully executed, and guard against all violations of the laws of the State of Texas.

Sec. 2. He shall see that all yearly or other reports required from the company by the Legislature or other proper authorities of the State of Texas, are duly prepared and transmitted by the proper officers.

Sec. 3. He shall see that all orders and resolutions of the board of directors or the executive committee in respect to the business of the company are duly executed and complied with; that the duties imposed by them on the various officers, agents and other employees accountable directly to the President and board are in all respects properly performed.

Sec. 4. He shall, in addition to the Treasurer, sign all checks drawn for the use of the company for three hundred dollars and upwards, to be countersigned by the Secretary, and in case of the absence or inability of the Secretary by the Treasurer.

Sec. 5. He shall have the power to negotiate contracts during the intervals of the meetings of the board subject to the approval of the board at its next meeting, save and except in cases specially provided for, and he shall perform such duties not otherwise provided for as are usually devolved upon the President of incorporated companies.

Sec. 6. In case a vacancy occurs in the office of President the same shall be filled by the board of directors without unnecessary delay, by a vote of the majority of all the members, either *viva voce* or by ballot if the latter be required by any two members present; notices of meeting at which such vacancy is to be filled shall set forth such special business.

#### *The Vice-President.*

In the absence of the President, or in case of vacancy by death or resignation, the Vice-President shall discharge the duties of President until the vacancy shall be filled by election of a President.

#### *The Secretary.*

Sec. 1. It shall be the duty of the Secretary to attend

at the office of the company *wherever* the business of the company may require him to do so.

Sec. 2. He shall give notice by letter or otherwise, as previously prescribed, to all the directors, of the time and place of any meeting of the board, and when officers are to be elected the same shall be stated in the notice of the meeting.

Sec. 3. He shall attend all meetings of the board of directors, keep a correct record and full minutes of all their proceedings, and enter same in a book to be kept for that purpose. He shall keep the books of the company, register all shares of stock and transfers thereof, countersign all certificates of stock and all deeds and contracts requiring the seal of the company, keep the seal and affix it to all such instruments as may be duly executed according to the laws, or that may be ordered by the board of directors, and perform all other duties that may be prescribed for him by the President or the board. In the absence of the Secretary at any meeting a secretary *pro tem* may be appointed.

Sec. 4. The Secretary shall communicate to the several parties interested, all resolutions and orders adopted by the board.

Sec. 5. He shall have the charge of all contracts, deeds of conveyance, and other similar documents, also, of all reports and communications to the board of directors.

#### *The Treasurer.*

The Treasurer shall keep accurate accounts in such forms as shall be approved by the executive committee of all the company's moneys received and paid out by him.

He shall sign all checks.

He shall deposit daily all moneys which he shall receive, to the credit of the company, in such bank or banks as may from time to time be designated by the board. He shall pay out money only upon the approval of the President, countersigned by the Secretary, unless specially

ordered by the board of directors or the executive committee, and his draft upon the financial agent in New York shall be countersigned by the President. He shall render a report to the directors at each stated meeting of the board, and monthly to the executive committee, of all moneys received and disbursed by him, and of the amount of money in his hands, and shall perform such other appropriate duties as may be required of him by the President of the board.

*The Financial Agent.*

Sec. 1. The Financial Agent, under the direction of the executive committee, shall have control of the company's fund in New York, and shall honor drafts made upon him by the Treasurer, countersigned by the President, for the uses of the company in the State of Texas.

Sec. 2. He shall, as often as once a month, examine and audit the accounts of the Treasurer, and shall report the result of such examination regularly, through the executive committee, to each stated meeting of the board.

*Chief Engineer and General Agent.*

Sec. 1. The Chief Engineer and General Agent shall be specially charged with the location and work of construction of the road; and, in the absence of the President and Superintendent, he shall have the general supervision of the affairs, officers, agents and employes of the company. He shall have charge, under direction of the President, of laying out town sites, purchasing and selling land and town lots, and of purchasing all supplies for construction.

Sec. 2. He shall approve all vouchers for payments of expense of construction, and all expenses in purchasing and selling land.

*The Superintendent.*

Sec. 1. Shall have charge of running and operating the road, and of all employes engaged thereon, and shall perform such other duties as may be required of him by

the President or board of directors. He shall report from time to time to the board the expediency of any measures, change, alterations or improvements proposed to be adopted or made in the running or operating of said road, and shall make monthly reports of his transactions to the board.

#### ART. FOUR.

Sec. 1. All other officers and employes of the company shall perform such duties as may be devolved upon them, and shall have such power as may be specially given them by the President or the board of directors.

Sec. 2. The authority here given to the executive officers shall in no case be delegated by them to another, without special authority to do so given by the board of directors.

Sec. 3. The President may be removed at any time by the board, on a vote of a majority of all the directors.

Sec. 4. All officers and agents not elected by the board or appointed by the executive committee may be removed by the President subject to being reinstated by the board.

#### ART. FIVE.

##### *Issue and Transfer of Stock.*

Sec. 1. All certificates of stock or shares shall be signed by the President and the Secretary, and countersigned by the Registrar, and authenticated with the company seal. No sale or conveyance of any property of the company shall be made unless authorized by the board of directors.

Sec. 2. The certificates for shares of the capital stock shall be numbered in progression, beginning with No. 1, and shall be entered in a book called the register of stockholders, and re-entered therein from time to time as changes may occur in ownership or certificates issued with the name of the stockholders, their places of residence, and the number of shares to which each is entitled.



Sec. 3. Each stockholder shall be entitled to a certificate of stock for the shares owned by him, upon which all payments made by him shall be endorsed.

The form of such certificates shall be as follows:

(Here the form of such certificate is shown in the minutes.)

Sec. 4. The transfer of any share may be made an instrument in writing, signed by the owner or his attorney, which writing may be endorsed on the certificate, or made in a separate paper. The assignee must cause his transfer to be presented and delivered to the Secretary of the company before it will entitle him to be recognized as the owner, and, upon presentation of such transfer with the certificate of stock, the Secretary shall record the same in books to be kept for that purpose, called "A Register of Transfer," and the President shall issue new certificate or certificates to the assignee as he may be entitled, unless they have notice of a fraud or invalidity of such transfer.

Sec. 5. "The Register of Transfers" shall be closed three days before each annual or special meeting, and no assignee of shares shall be entitled to vote by virtue thereof at such meeting unless such assignment has been presented for record before the time specified in this article.

Sec. 6. In all cases of the issue of a duplicate or substitute certificate for a certificate alleged to be lost or destroyed, the duplicate shall be void should the original subsequently be presented.

Sec. 7. Of all issues of certificates, original or duplicate, and of assignments of stock, due entry shall be made in the register of stockholders by the Secretary.

#### ART. SIX.

None of the foregoing by-laws shall be repealed or altered unless at a regular annual meeting of the stockholders, or at a special meeting called for the purpose,

by due notice given to the stockholders of such called meeting setting forth its object.

The witness testified that the above were the by-laws of the Houston & Great Northern Railroad Co., in force during the months of March and April, 1872, and up to December 2nd, 1872. The above by-laws were introduced subject to the objection as to the portions thereof with reference to the executive Board, which objections were made before the introduction of the by-laws, relating exclusively to the portions set out above relative to the executive board.

The defendant objected that any portions relating to the executive board, and any powers conferred upon the executive board were inadmissible, because the executive board could not be substituted for the board of directors, and that any such attempt would be an infringement upon the power which the law placed in the board of directors, and also, in this connection, to the questions proposed to be asked the witness, and to be shown by the minutes as to what they showed in regard to executive officers, making the same objections as above, that no powers could be lodged in the executive officers in substitution for the powers placed by law in the board of directors, which objections being overruled by the court, the defendant then and there excepted to the ruling of the court, and took this its bill of exception No. 4; whereupon, over such objections, all of the by-laws, including that portion relating to the executive board, as appears above, were introduced and read to the jury, and also relating to the executive officers, and the witness, over the objections, reading from the minutes, stated that it appeared therefrom that the first executive officer named in the by-laws was the President, and that the Chief Engineer and General Agent was named as an executive officer, and in this connection plaintiff's counsel stated to the court that the principal purpose in introducing

these matters was to show the authority of Grow, who was President of the corporation, and that, if the executive committee or Grow did not have authority save on approval of their acts by the directors, yet the matter he was introducing would be admissible, to be considered by the jury, in connection with circumstantial evidence of such approval, to be later offered. The witness was next requested to turn to pages 152 and 156 of the minutes, and said that he found there the by-laws of the H. & G. N. R. R. Company, approved December 2, 1872, which were then offered in evidence by the plaintiffs, only upon the issue of authority for the performance of any acts which occurred subsequently to the date of the by-laws, and upon the issue of ratification of any acts that had occurred before that time. Whereupon, defendant objected to the introduction of the by-laws, (1), because the petition alleges a contract between Judge Reagan and Grow, and with Anderson County, anterior to these by-laws, and to have been made in May, 1872, the by-laws being of December, 1872, subsequent to the election and also to that portion relating to the executive board, for the reasons set forth in bill of exceptions No. 4, above, which objections being considered by the court, were overruled, and the defendant then excepted and took its bill of exceptions No. 5, and over the objections the by-laws were read in evidence, being the same as the by-laws of December 4, 1871, above, except in the following particulars:

BY-LAWS OF THE H. & G. N. R. Co., APPROVED  
DEC. 2, 1872.

(Art. One, Section 1, identical with Art. One, Sec. 1, of the other by-laws already copied.)

(Sec. 2 being the same down to "A secretary," and reading from there as follows: "an Auditor a Financial Agent, a Chief Engineer, a General Agent," and from this on, the same as the other.)

(Sec. 3 being identical with Sec. 3 already copied.)

(Sec. 4. The salaries of the foregoing officers shall be fixed by the board of directors or the executive committee, and all salaries shall be paid monthly.)

(Sec. 5 being same as Sec. 5 copied.)

Sec. 6. The board of directors shall have power, and are hereby authorized, by a vote of a majority of the directors, to mortgage the road and such property of the company as they shall deem proper, in order to procure money for constructing and equipping the road; provided, such mortgage or mortgages shall not at any time exceed \$26,000 per mile of finished road.

#### ART. TWO.

(Sec. 1 being same as the other down to "Directors elected under the provision hereof shall hold office until," and then comes, "next annual meeting, and until their successors," etc., etc., the same as the other.)

(Sec. 2 the same as the other copied.)

(Sec. 3 being the same.)

Sec. 4. At all stockholders' meetings for the transaction of business, a majority of the stockholders shall be represented either in person or owner or by *proxie*. Each share of stock shall be entitled to one vote, which may be given by the owner of the share in person, or by his *proxie*.

(Sec. 5 being same as Sec. 4 copied.)

(Sec. 6 being same as Sec. 5 copied.)

(Sec. 7 being same as Sec. 6 copied.)

(Sec. 8 being same as Sec. 7 copied.)

(Sec. 9 being same as Sec. 8 copied.)

(Sec. 10 being same as Sec. 9 copied.)

(Sec. 11 being same as Sec. 10 copied.)

(No further sections of Art. Two in these by-laws.)

#### ART. THREE.

##### *Executive Committee.*

Sec. 1 being identical with Section 11 of Art. Two copied.

Sec. 2 being identical with Section 12 of Art. Two copied.

Sec. 3 being identical with Section 13 of Art. Two copied.

Sec. 4 being identical with Section 14 of Art. Two copied.

#### ART. FOUR.

##### *Register of Stocks and Bonds.*

Sec. 1 being same as Sec. 15 of Art. 2 copied.

Sec. 2 being same as Sec. 16 of Art. 2 copied.

#### ART. FIVE.

##### *Executive Officers.*

Sec. 1 being same as Sec. 1, Article Three, headed same as above.

Sec. 2 being same as Sec. 2 under above head.

Sec. 3 being same as Sec. 3 under above head.

Sec. 4 being same as Sec. 5 under the above head, there being no paragraph contained therein as Sec. 4 under the above head.

Sec. 5 being same as Sec. 6 under above head.

##### *The Vice-President.*

Being same as in the other one already copied.

##### *The Secretary.*

Sec. 1 being same with the other.

Sec. 2 the same.

Sec. 3 is the same except "he shall keep the books of the company" should be left out of this one.

Sec. 4 being the same.

Sec. 5. He shall have charge of all contracts, deeds of conveyance, leases, legal instruments and other similar documents, also of all reports and communications to the board of directors, and shall keep a record of the purchase, sale, lease and conveyance of all lands of the company.

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*The Treasurer.*

The first two paragraphs being same, and the third being as follows:

"He shall deposit daily all moneys which he shall receive, to the credit of the company, in such bank or banks as may from time to time be designated by the board. He shall pay out money only upon vouchers after the same are audited and duly approved by the President, unless specially ordered by the board of directors or the executive committee, and his draft upon the Financial Agent at New York shall be countersigned by the President.

Sec. 2. He shall report daily in detail to the Auditor the amounts of receipts and disbursements.

Sec. 3. He shall render a report to the directors at each stated meeting of the board, and monthly to the executive committee of all moneys received and disbursed by him, and of the amount of money in his hands, and shall perform such other appropriate duties as may be required of him by the President or the board.

*Financial Agent.*

Sec. 1 and Sec. 2 being the same.

*Chief Engineer.*

Sec. 1 the same as above, except leave out "and General Agent" in the beginning, and at close leave out "purchasing and selling land and town lots," and then finish as the other one.

Sec. 2. He shall certify all vouchers for expenses of construction.

Sec. 3 the same.

*General Agent.*

The General Agent shall be charged specially with procuring the right-of-way, settling land damages, purchasing of land, and such other general business as shall be assigned him by the President or board of directors.

### *General Superintendent.*

Sec. 1. The General Superintendent shall have charge of running and operating the road, and of all employes engaged thereon, and shall perform such other duties as may be required of him by the President of board of directors.

Sec. 2. He shall, before they are audited, certify to all vouchers for the expenses of operating the road.

Sec. 3. He shall report from time to time to the board the expediency of any measures, change, alterations or improvement proposed to be adopted or made in the running or operating of said road, and shall make monthly reports of his transactions to the board.

### *Auditor.*

Sec. 1. The Auditor shall have charge of the books and accounts of the company, and all papers relating thereto, keeping such records as will enable the condition of the account to be ascertained at all times.

Sec. 2. He shall examine, audit and register all vouchers before they are sent to the Treasurer for payment.

Sec. 3. He shall perform such other duties as may be required of him by the President or the board of directors.

### ART. SIX.

Sec. 1 being same as Sec. 1 under Art. Four, above.

Secs. 2 and 3 being same as under Article Four.

Sec. 4 being the same as Section 4 under Article Four.

### ART. SEVEN.

#### *Issue and Transfer of Stock.*

Unchanged.

### ART. EIGHT.

Sec. 1 the same which is under Art. Six of the other.

The witness Howard testified that an inspection of the minutes of the meeting of the board of directors of the H. & G. N. R. R. Co. held on December 4, 1871, showed that Galusha A. Grow was elected President, and Charles



E. Noble, Chief Engineer and General Agent of that Company, and he read from the minutes the following resolution:

"On motion, resolved that the President is hereby authorized to act as General Superintendent, until such time as he may desire one, and is hereby authorized to secure one at any time." Adopted Dec. 4, 1871.

The witness next turned to page 90 of the minutes of a meeting of the directors of the H. & G. N. R. R. Co., and found there a resolution of the date 14th of February, 1872, as follows:

"On motion, it was resolved that the President be instructed to proceed with the work of extending the road, providing counties make satisfactory subscriptions."

The witness also read from page 21, the minutes, stating that on Feby. 13, 1872, the report of the consultation by Grow and Dodge on the question of consolidation with the International Railroad Company was submitted, and it was resolved that the agreement for consolidation be adopted, and when adopted by the International Railroad Company that the officers execute the same.

Turning to page 109, the witness found there a minute of a meeting of the board of directors of the H. & G. N. Railroad Co., held March 27th, 1872, showing the articles of agreement for the consolidation of the International and the Houston & Great Northern Railroad, bearing date 19th of February, 1872. It was agreed that the stockholders jointly, of both roads, ratified this agreement on the 23rd of September, 1873, and the articles of agreement were then introduced in evidence, as follows:

#### ARTICLES OF AGREEMENT.

Between the International Railroad Co. and the H. & G. N. Railroad Co., made this the 19th day of February, 1872, subject to the adoption or rejection of their stockholders, by vote of three-fourths of the shares of the stock of each company.

Art. 1. The companies aforesaid hereby agree to unite,

merge, and consolidate their several properties and franchises, although authority to consolidate is granted by the charter of the International Railroad Company, it is considered expedient that such authority should be enlarged, and expressed more definitely and in detail, which should properly be done by further legislative enactment.

Art. 2. It is therefore mutually agreed that until such legislation can be obtained, or the impossibility of obtaining such legislation be ascertained, the formal and legal embodiment of this consolidation shall be postponed, but in the meantime the interest of the two companies shall be considered as one interest, and managed in view of such consolidation.

Art. 3. From the date of this instrument, the administration of the two companies shall be run and conducted in the following manner, viz.:

1st. Each board shall retain its own existence and its own officers, and its minutes, to record the proceedings which concern the interest of its own company.

2nd. The direction of the business of the two companies shall be in the hands of a joint board, which shall consist of all the members of each board.

3rd. All resolutions concerning the interests of the two companies shall be submitted to and be passed upon by the joint board.

4th. If a quorum of both boards is present, and the joint meeting has been called in such a manner as to answer the requirements of the by-laws of each company, a Secretary of each company will select from the proceedings of the joint board those resolutions which concern his company, and engross them as the minutes of his own board. In the absence of a quorum of either board at any meeting of the joint board, it will be necessary, and it is agreed that such board shall afterward, as soon as practicable, hold a meeting, and pass the resolutions adopted at the meeting of the joint board.

5th. At the first meeting of the joint board there shall be elected by a ballot a member who shall act as President of the joint board, and there shall be appointed a proper person to act as Secretary. The duty of the President of the joint board shall be simply to preside at and to call the meetings of the joint board. He shall at any time, upon the request of the President of either board, summons the joint board. The duty of the Secretary shall be to keep the minutes of the two boards and generally to perform the services of Secretary of the joint board.

Art. 4. Until such time as the further legislation desired shall be obtained, the affairs of the company shall be managed and controlled in the manner above indicated, unless it shall be deemed advisable and proper to effect permanently the consolidation upon the authority already existing and contained in the charter of the International Railroad Company, in which case formal articles of consolidation upon the basis of this agreement shall be prepared and put on record in the proper places.

Art. 5. The basis of the consolidation is hereby stated and agreed to be on the following terms:

The existing stock of each company now issued is to be called in and cancelled, and stock of the joint or consolidated company is to be issued to the amount of five million dollars (\$5,000,000.00), which shall represent the property of every description belonging to the joint companies.

The said five millions of consolidated stock shall be divided between the two companies in the following proportions, to wit:

23,430 shares of \$100.00 each to the Int. R. Company; 26,570 shares to the H. & G. N. R. Co., to be divided between their respective stockholders, according to their respective interest.

Art. 6. This agreement is made upon the assumption

that the claim of the H. & G. N. R. Company for a land grant of 16 sections per mile from the State is perfected, and the land secured, and that the subsidy of \$10,000.00 per mile in Texas State bonds granted to the Int. R. Co. is also sure and certain, and that said subsidy and land grant are taken as an offset to each other in the establishing the basis of consolidation.

In case, however, that the H. & G. N. R. Co. shall fail to secure its grant of land, then the stockholders of the Int. R. Co. of record on the date of this agreement shall be entitled to receive the subsidy to the extent of the amount due on 100 miles of road.

And in case the H. & G. N. R. Co. shall obtain its lands and the Int. R. Co. shall fail to secure its bonds, then the stockholders of record of the H. & G. N. R. Co. at the date of this agreement shall in like manner be entitled to receive the said lands for 100 miles of road.

Art. 7. From and after this date, the earnings of the two companies shall be considered as belonging to the joint company, and the expenses incurred shall be joint expenses, but the accounts and the management of funds shall, as heretofore, be directed by the officers of the respective companies, until the permanent consolidation is effected.

In witness whereof, the Int. R. Co. and the H. & G. N. R. Co. have caused these presents to be signed by their respective Presidents, and their respective seals affixed, and approved the day and year first above written.

J. SANFORD BARNES,  
*President H. & G. & R. Co.*

GALUSHA A. GROW,  
*President H. & G. N. R. Co.*

Plaintiffs read from page 167 of the directors' minutes that on Dec. 13, 1872, G. A. Grow was elected President, C. E. Noble, Chief Engineer, and H. M. Hoxie, General Superintendent of the H. & G. N. R. Co.

The plaintiffs next offered in evidence the minutes of

the H. & G. N. R. R. Co. on pages 169 and 170, directing Wetmore to pay certain drafts in favor of Grow, President, and as is set out below, and this offer being made by the plaintiffs, the defendant objected thereto, (1) that the matter offered was immaterial and irrelevant, it being an irrelevancy what expense Grow had been to in procuring donations of county bonds and lands to International and H. & G. N. Railroads, and could have no bearing upon the issues involved. (2) That it was out of due order to introduce such matter now, but that it was upon the plaintiffs, if such matter was admissible, at any time, which is not admitted, to offer first, the contract with Anderson County in regard to the bond issue, all of which was in writing. (3) Defendant's counsel requested plaintiff's counsel to hand to him the proceedings of the County Court of Anderson County in 1872, with reference to the election and the bond issue, including Shattuck's protest, and the whole matter, which, being handed to defendant's counsel he exhibited the same to the court, it being the documents all hereinafter set out and introduced in evidence by the plaintiffs, and objected to the offered minutes further; (4) that the law required all contracts with reference to issue of bonds by the county, in promotion of the railroad, to be in writing, and that no independent considerations or collateral matters not so in writing are admissible in evidence. (5) That the contract appears to have been formed by the county, as shown by the writings in 1872, that over forty years have elapsed since that time, and it is now being attempted to prove by parol, modification of the conditions or collateral contracts alleged to have been made in consideration of and in connection with this original contract and not in writing, which collateral matters and parol modifications and conditions are inadmissible after this lapse, to add to or detract from the contract, which is in writing. (6) That the matter now offered in evidence is offered with a view of contradicting, and if it

has any relevancy, is in direct conflict to the written documents, giving the history of the election exhibited to the court by the defendant's counsel, and which plaintiffs have possession of, and which they say they will offer in evidence, and which are complete within themselves, and consist of a written record not subject to modification, or conditions or variations by parol. (7) That the record of the election and the proceedings therein, and the bond issue made by the County of Anderson, and now exhibited to the court, is the proper adjudication and determination of the considerations on which the bonds were issued and shows the matter to be *res adjudicata*, and cannot be detracted from or added to, in order to show that there was an inducement or preliminary contract in connection with such matter. (8) That if the plaintiffs had any rights, such as they are attempting to show by parol, they were personal rights, exclusively against the H. & G. N. R. R. Co., consolidated with the I. & G. N. R. R. Company, and now sold out, as appears from the evidence already introduced, and sold out under a mortgage made in 1881, as already appears; and it further appearing that the plaintiffs are claiming under the act of 1889, and that by such subsequent act a burden was fixed upon the properties or property now held by the defendant, the plaintiffs are attempting to violate the obligation of their alleged contracts by adding thereto, and claiming a security under the act of 1889, and to violate the obligation of the mortgage of 1881, and the rights of the defendant as a purchaser under the foreclosure thereof by modifying their alleged contracts of 1872 and 1875, and adding a security thereto, as contended by them, under the act of 1889, all in violation of the obligation of such alleged contracts, and of the Fourteenth Amendment to the Constitution of the United States, and of Sub-section One of Section X of Article I of the Constitution of the United States of America, and also in violation of the Constitution of the State of Texas, where-

by the act of 1889, or the application made of it to the facts of this case, would be unconstitutional and void in such attempt to secure an admittedly purely personal contract in 1889, as against the property, or any of the properties, now held by the defendant. (9) Further, the defendant objects that the proposed minutes offered were of the executive committee, and that if these matters had any relevancy, they were conclusively within the power of the board of directors, and not of the executive committee, and that the executive committee had no power under the law or the charter to pass any such resolutions, and all of these objections were applied to the resolutions on pages 169-170 herein duly set out. And these objections being considered by the court, were all by the court overruled; whereupon, defendant, in open court, excepted, and took this its bill of exceptions No. 6, and over the defendant's objection, there was then read in evidence from the minutes of the executive committee of the H. & G. N. Railroad Co., pages 169-170, the following resolution, adopted February 4th, 1873, to wit:

"On motion, resolved that Jacob S. Wetmore, Financial Agent, is hereby authorized and directed to pay draft of Galusha A. Grow, President Houston & Great Northern and International & Great Northern Railroad Companies, to an amount not to exceed \$25,000.00, which amount shall be credited to said Grow for extra services and expenses in procuring private donations of land and county bonds to the International and the Houston & Great Northern Railroad Companies,"

and also from page 170, a resolution adopted Jany. 11, 1873, as follows:

"On motion, resolved that the President, Galusha A. Grow, is hereby authorized to receive from the County of Anderson, or any other county having donated bonds to this company, the bonds donated in aid of the building of the road, and to receipt for the same."



From the minutes of the Houston & Great Northern Railroad Company was read an excerpt from the Treasurer's account, being of a joint meeting of the stockholders held at Houston, Texas, December 22nd, 1873, which showed that the company at that time had on hand \$100,000.00 of Anderson County bonds, valued at \$75,000. This appeared on page 214 of the minutes.

There was introduced from page 247 a record of the by-laws adopted by the I. & G. N. R. R. Co. by its stockholders at meetings held September 24th and 27th, 1873, which witness testified were the by-laws in force up to June, 1875, and thereafter. These by-laws and those of the H. & G. N. R. R. Co. already in evidence were offered as all the by-laws of the H. & G. N. and I. & G. N. Companies, shown by the minutes in the custody of witness. To the introduction of a portion of said by-laws referring to the executive committee, the defendant objected that no powers therein attempted to be vested with the executive committee were powers so legally vested, but were vested by law and under the charters of the companies in the board of directors, and could not legally be exercised by the executive committee, therefore, that such portions of the by-laws as relate to the executive committee were inadmissible; which objections were overruled by the court, and the defendant then excepted and took its bill of exceptions No. 7, and over the defendant's objection the by-laws were read in evidence to the jury, being the same as the by-laws of the H. & G. N. R. Co. set out above, with the following exceptions:

Of the by-laws adopted by joint companies on Sept. 24 and 27, 1873:

Sec. 6, Art. One. "The board of directors shall have power, and hereby authorized by a vote of the majority of directors, to mortgage the road and such property of the company as they shall deem proper in order to procure money for constructing and equipping the road."

Sec. 2 of Art. One. "At the first meeting of the board

of directors after such election, they shall elect from their own number a President and Vice-President for the ensuing year, and shall appoint a Treasurer, a Secretary and Auditor, a Financial Agent and Chief Engineer, a General Agent, a Register of Transfer of Stocks and Bonds, a General Superintendent, and such other officers and agents as they may deem necessary for the transaction of the business of the company."

Sec. 11, Art. Two. "The business of the company during the intervals of the meetings of the board of directors shall be transacted by the executive officers, but all contracts not of immediate necessity for the proper management of the business of the company, and not otherwise provided for, to be subject to the approval of the board or executive committee."

Sec. 1, Art. Three, page 254. "The President shall be the chief executive officer of the company, and shall have power to call special meetings of the board of directors at such time and places as may be designated by him; and it shall be his duty to call such meetings on the written request of any two members of the board, and he shall preside at all meetings of the directors when present thereat, sign all certificates of stock and all deeds and contracts requiring the seal of the company, unless otherwise ordered by the board, and shall have the general management and supervision of the affairs of the company. He shall see that the by-laws, rules and regulations of the board are faithfully executed, and guard against all violations of the laws of the State of Texas."

Sec. 4, Art. Three. "He shall have the power to negotiate contracts during the intervals of the meetings of the board, subject to the approval of the board at its next meeting, save and except in cases specially provided for; and he shall perform such duties not otherwise provided for, as are usually devolved upon the President of incorporated companies."

Under head "General Superintendent":

Sec. 1, Art. Three. "The General Superintendent shall have charge of running and operating the road, and of all employes engaged thereon, and shall perform such other duties as may be required of him by the President or the board of directors."

Section 3 under head "General Superintendent":

"He shall report from time to time to the board the expediency of any measures, change, alterations or improvement proposed to be adopted or made in the running or operating of said road, and shall make monthly reports of his transactions to the board."

The Auditor is named as one of the executive officers, and his duties are defined:

Sec. 1, Art. Six. "All other officers and employes of the company shall perform such duties as may be devolved upon them, and shall have such powers as may be specially given them by the President or the board of directors."

The witness Howard next testified that he did not know whether the reports of the General Superintendent had been preserved, that there were no such documents in his possession; that the minutes of the board of directors of the I. & G. N. R. R. Company showed that R. S. Hays was Chief Engineer on July 30th, 1872, and had been Chief Engineer from May, 1872, and furthermore, that on November 26, 1872, the minutes showed that Galusha A. Grow was elected a director of the International Railroad Company, and was elected President of the International Railroad Co. on November 26, 1872, all of which is shown by the minutes of the joint board of directors; Barnes resigning his presidency of the International Railroad, to take effect December 1st.

The plaintiffs next offered in evidence a minute of the I. & G. N. R. R. Co. allowing Grow further and additional allowances for his extra services, to which the defendant interposed the same objections as contained in bill No.

6 above, and also that the transaction was shown by the minutes as in 1874, an action of the joint board of the two roads, and was not relevant, and was subsequent to the contract alleged to have been made by Grow, which objection being overruled, the defendant excepted, and took its bill of exceptions No. 8; and over its exceptions there was read in evidence from the minutes of the joint board of directors, of date of July 21, 1874, the following:

"On motion, resolved that the President be granted \$5,000.00 in addition to the amounts authorized by resolutions of the 4th of February and 3rd of December, 1873, and 7th of April, 1874, which amount is in full payment for extra services and expenses as provided in the original resolution of the 4th of February, 1873."

The witness next read from the minutes of the Board of directors of the I. & G. N. R. R. Co. of date July 21st, 1874:

"On motion, resolved that the General Manager be authorized to perform the duties of the President in Texas in his absence."

At this meeting on July 21, 1874, R. S. Hays was elected General Manager and Chief Engineer, and H. M. Hoxie was elected General Superintendent of the I. & G. N. R. R. Co.

It was also shown from the minutes that on the 17th of September, 1874, Grow resigned as President, and that on April 5, 1875, Samuel Sloan was elected President, and R. S. Hays, Vice-President of the I. & G. N. R. R. Co.

Also from the minutes of the board of directors of the I. & G. N. R. R. Co., of April 5, 1875, page 102, was read:

"On motion, it was resolved that the general offices of this company be moved to Palestine, in Anderson County, Texas, as soon as practicable, and that it be the duty of the Secretary to give timely notice of such removal in the Houston Daily Telegram and the Galveston Daily News."

This meeting of the board was held at Houston, Texas, as shown by the minutes.

Next there was read to the jury a list of stockholders of the I. & G. N. R. R. Co., appearing on the pages of the minutes 31 to 34, 55 and 56, 81 and 82 and 85, dated April 7, 1879, November 1st, 1879, November 17th, 1879, respectively, from which it appeared that the stockholders in said company were the same on each of the dates mentioned, save for the stock transfers noted in paragraph 28 below.

Witness Howard testified that all of the annual meetings of the stockholders and directors of the I. & G. N. R. R. Co. were held from 1881 to 1888, as shown by the minutes, at Palestine. There was a meeting there of the stockholders on April 2, 1888, but on account of injunction, there were no meetings between April 2, 1888, and April 3, 1893; being an injunction obtained by the State on the M. K. & T. leasing the I. & G. N., preventing both roads from holding meetings. The witness' answer had been given with reference to annual meetings, and all annual meetings (except during the period of the injunction), of the directors and stockholders had been held in Palestine up to 1911, as shown by the minutes of the I. & G. N. R. R. Co., which are now testified to and checked back to and including the year 1881, and in 1889 the minutes show that a meeting of the board of directors was held at the general offices in Palestine, and a notice is shown of such meeting being held "at the general offices of the company at Palestine," and this was shown to be the form of notice appearing on the minutes during the period of 1881 to 1889.

Plaintiffs offered in evidence, from page 103 of the minutes, a resolution adopted by the stockholders of the I. & G. N. R. R. Co. on June 1, 1881, ratifying the action of the Company's board of directors, executive committee, President and Secretary, in leasing the I. & G. N. R. R. to the Missouri, Kansas & Texas R'y Co. for 99 years, and authorizing such officers to make and to carry out such lease.

Plaintiffs then tendered in evidence such lease, an abstract of which is as follows:

ABSTRACT OF LEASE, INTERNATIONAL & GREAT NORTHERN  
RAILROAD COMPANY TO MISSOURI, KANSAS &  
TEXAS RAILWAY COMPANY.

Dated June 1st, 1881.

This document recites that the two roads connect at Mineola in Wood County, Texas; and that they desire to make a lease and contract with respect to the use, management and working of the railroads of the International & Great Northern Railroad Company.

The I. & G. N. R. R. Co. leases and demises to the Missouri, Kansas & Texas Railway Company (hereinafter designated as the M. K. & T.), its railroads from Longview to Houston, 232 miles, more or less; from Palestine to San Antonio, 262 miles, more or less; from Mineola to Troup, on its line, between Palestine and Longview, 44 miles, more or less; from Overton, on its line between Palestine and Longview, to Henderson, 16 miles, more or less; from Phelps, on its line between Houston and Palestine, to Huntsville, 8 miles, more or less; from Roundrock, on its line between Palestine and San Antonio, to Georgetown, 10 miles, more or less; from Houston to Columbia, 50 miles, more or less; or 622 miles, more or less; together with all sidings and branch lines, "depots, stations, buildings, equipment, machine and other shops, tools and appurtenances and property, real and personal," owned or to be acquired by the I. & G. N. R. R., with the exception only of lands and land grants and all property not needed in connection with or necessary to the use and operation of the properties demised.

The term of the lease is made 99 years from June 1, 1881. A stipulation is made that the M. K. & T. should have full and exclusive power to use, manage and work the railroad, and fix the tolls, not to be higher than authorized by the charter of the I. & G. N. R. R., and also

to collect all the tolls and freight charges, and exercise and enjoy all the rights and powers that could be lawfully exercised by the demised railroad as fully as it could exercise the same, but the lessee was prohibited from making any mortgage which could affect the rental to be paid.

The consideration for this lease was:

(1) The lessee and its assigns agreed to work the railroad, provide rolling stock which it should consider necessary, and collect all tolls.

(2) The lessee to bear the cost of repairs and maintenance and all operating expenses whatsoever, and of new equipment which it might consider necessary to put in, and also taxes, and the expenses of maintaining the organization of the I. & G. N. R. R. Co., including the expense of maintaining general offices of the I. & G. N. in the City of New York, and the expenses of a transfer agency, registrar of its stocks and bonds, and for paying interest on its mortgage debts.

(3) The lessee to pay income to interest upon mortgage bonds of the I. & G. N. R. R., and any surplus as might be directed by the directors of the I. & G. N. R. R.

(4) It was stipulated that if the net or surplus revenue should not be sufficient to cover fixed charges on the I. & G. N. properties, the lessee could, at its option, advance the same, and such advances should be a preferred debt, next to the lessor's first and second mortgages, and to be secured by a lien; but the lessee not obligated to make such advances, and if it did not make them, and the interest remained unpaid for six months, then the I. & G. N. would have the right to cancel the lease.

(5) The extension being made by the I. & G. N. from San Antonio to Laredo, Texas, and all other extensions or acquisitions whenever completed or acquired, included in the lease.



(6) The M. K. & T. to keep all buildings insured and in good order.

(7) The M. K. & T. obligated to keep accurate accounts of all revenues and expenditures, and to submit them to the I. & G. N., and its President and Vice-President, who, with a committee of its board of directors, appointed agents of the I. & G. N., given the right at all times to travel free over the demised railroad for the purpose of inspection.

(8) In case an agreement should be perfected for the management and common operation of both roads or either of them, with other Southwestern roads, under one organization or company, then, at the election of the lessee, this lease to end.

(9) In case of differences, provisions for arbitration. This lease was terminated in 1888.

Plaintiffs offered in evidence from the minutes the following agreement, of date Nov. 26, 1881, to wit:

*Memorandum of Agreement* made this twenty-sixth day of November, A. D. 1881, in the City of New York, between Collis P. Huntington, of the City of New York, for and on behalf of himself and associates, and for and on behalf respectively of the Southern Pacific Railroad Company of California, the Southern Pacific Railroad Company of Arizona, and the Southern Pacific Railroad Company of New Mexico, the Galveston, Harrisburg and San Antonio Railway Company, the Texas & New Orleans Railroad Company of Texas, and the Louisiana Western Railroad Company of Louisiana, and extensions thereof owned or controlled, or hereafter to be owned or controlled by the said Huntington, or the said Railroad Companies above named, or any of them, of the first part; and Jay Gould, of the City of New York, for himself and on behalf of his associates, and for and on behalf respectively of the Texas and Pacific Railway Company, the International and Great Northern Railroad Company, and the Galveston, Houston and Henderson Railroad

Company of Texas; and for and on behalf of the Missouri Pacific Railway Company, the Missouri, Kansas and Texas Railway Company and the St. Louis, Iron Mountain and Southern Railway Company.

Witnesseth: *That Whereas*, The said Huntington and his associates own and control a majority interest in the said companies for whose behalf he acts as aforesaid;

*And Whereas*, the said Gould and his associates own and control a majority interest in the companies for whose behalf he acts as aforesaid;

*And Whereas*, divers differences have arisen and exist between the three Southern Pacific Railroad Companies above named, and the said Galveston, Harrisburg and San Antonio Railway Company, on the one hand, and the Texas and Pacific Railway Company on the other;

*And Whereas*, in respect to some of the said differences various suits are pending in the courts of Arizona, New Mexico and Texas, threatening long-continued, troublesome and expensive litigation;

*And Whereas*, the continuance of such litigation is injurious to all of said companies, and incidentally to the public interest, so far as business of said lines is concerned;

*And Whereas*, said differences and litigation have been found, upon conference and deliberation, to be susceptible of amicable adjustment, as in this contract provided;

*And Whereas*, the Missouri Pacific Railway Company, the Missouri Kansas and Texas Railway Company, and the St. Louis, Iron Mountain and Southern Railway Company own and control lines of railroad connecting with the road of the Texas and Pacific Railway Company, and are interested in the subject-matter of this agreement, except as so far as pertains to the direct controversies in the pending suits between the said Southern Pacific Railroad Companies and the Galveston, Harrisburg and San Antonio Railway Company, on the one side,

and the Texas and Pacific Railway Company on the other.

*Now, Therefore*, the parties hereto, with a view permanently to settle all controversies between said companies of the first part, or any one or more of them, and the companies of the second part, or any one or more of them, and to prevent future controversies, and in consideration of the premises and of the mutual covenants hereinafter contained, the parties hereto do covenant, promise and agree, each with the other, as follows:

(1.) **MUTUAL AGREEMENT TO JOIN TRACKS EAST OF EL PASO.**

It is mutually agreed, by and between the parties hereto that the Texas and Pacific Railway Company shall continue the construction of its road now being built in Texas, westward, until its continuous track shall approach the track of the Galveston, Harrisburg and San Antonio Railway Company, which is now building eastwardly from El Paso, along the valley of the Rio Grande, until the two shall meet and be connected, so as to form one through line to the Pacific Ocean; the point of junction to be agreed upon between the respective Chief Engineers, who shall select a suitable place for such junction, as nearly as practicable intermediate between the ends of the tracks of the said roads as now laid as aforesaid. This point of junction is hereafter referred to in this instrument as the "Junction."

(2.) **RELINQUISHMENT OF TEXAS AND PACIFIC CLAIMS IN TERRITORIES.**

The Texas and Pacific Railway Company shall release, relinquish and convey, in such form as counsel for both parties may agree and advise, all of its right, title, interest and estate in and to the railway constructed by the said Southern Pacific Railroad Companies of Arizona and New Mexico, and which railways in suits now pending are claimed by the said Texas and Pacific Railway Company to be constructed upon its right-of-way and to be its

property; which claims are denied by the said Southern Pacific Railroad Companies.

(3.) TRANSFER OF LAND GRANT WEST OF EL PASO TO  
SOUTHERN PACIFIC COMPANIES.

The party of the second part further covenants, promises and agrees that the Texas and Pacific Railway Company, being entitled under the 9th Section of the Act of Congress of March 3d, 1881, whereby it was incorporated, to a land grant from the United States, as shown by the said Act (which land grant was made to the said Texas and Pacific Railway Company, its successors and assigns), shall execute a deed whereby it shall in terms assign, transfer and make over the said land grant in such form as counsel for both parties may advise, to the said Southern Pacific Railroad Companies, respectively, and shall allow its corporate name to be used; or, at the request and expense of said assignees, shall take such steps as the said assignees may require, in order to make the said land grant available to the said assignees; and, if the said assignees shall desire to procure any Congressional ratification of such transfer, the Texas and Pacific Railway Company and the said second parties shall not hinder nor embarrass such action, but shall promote the same in any reasonable way in its or their power.

(4.) TEXAS PACIFIC TO CEDE FRANCHISES WEST OF EL  
PASO.

The party of the second part further agrees that the Texas and Pacific Railway Company shall execute an instrument whereby it undertakes to cede and make over all its corporate rights and franchises west of El Paso to the said Southern Pacific Railroad Company, respectively, their successors and assigns, as the case may be. Any Congressional ratification thereof shall contain a provision that they are acquired by the said Southern Pacific Railroad Companies, or said assigns, subject to the right of the Texas and Pacific Railway Company, and

a reciprocal right on the part of the said Southern Pacific Railroad Companies to have the entire roads of each and all of said companies operated and used for all purposes of communication, travel and transportation, so far as the public and Government are concerned, as one continuous line. And the said Texas and Pacific Railway Company shall convey to the Southern Pacific Railroad Company of California, or to such company as may be designated by the party of the first part, all of its right, title, and interest to any and all property, rights and franchises in the State of California, and in and near the City of San Diego.

(5.) UNDERTAKINGS OF PARTY OF THE FIRST PART.

In consideration of the foregoing agreements, and especially the agreement of the Texas and Pacific Railway Company relinquishing, releasing and conveying its right, claim, title, interest and estate in and to the road and way and right-of-way on which the railroad is constructed in New Mexico and Arizona, the said Huntington, for himself and for the said railroad companies on whose behalf he acts, covenants, promises and agrees to and with said Gould, and with each of the Companies on whose behalf he acts, as follows:

ROADS TO BE OPERATED AS ONE THROUGH LINE, AND EARNINGS DIVIDED.

1st. That he will, on his part, procure, or cause to be procured, an agreement that the road of the Texas and Pacific Railway Company and the road of the Southern Pacific Railroad Companies, shall be operated as aforesaid as one through continuous line; and that the gross earnings from all through business passing over one of said company's lines to the other shall be divided between them in proportion to the distance hauled by each, with equitable and reasonable allowances to each for terminal expenses, not to exceed the current charges on similar business handled by the Union and Central Pacific line;

and no terminal charges elsewhere by either of the parties shall exceed those at San Francisco.

#### RATES AND JOINT AGENTS.

2nd. That the said companies of the party of the second part, and each of them, may establish offices and agencies at San Francisco, Los Angeles, San Diego, and all other ports and places on the Pacific Coast, and competing points on the Pacific Slope reached by the Southern Pacific Railroads and their connections, and contract for through business of all kinds, including freight and passengers, via the lines of the said railroads of the party of the first part; and the said companies constituting the parties of the first part shall carry all through business on as favorable terms as they carry for the Galveston, Harrisburg and San Antonio Railway Company, the Atchison, Topeka and Santa Fe Railroad Company, the Union Pacific Railway Company, the Atlantic and Pacific Railroad Company, or any other connecting companies; not to exceed the pro rata per mile of the through rate, with allowance for terminal expenses as aforesaid, and that all through rates via this line between all points on the Pacific Coast and competitive points on the Pacific Slope and East shall be at all times as low as by any other route; and if any dispute arises between the parties as to whether the through rate is as low as by any other route, the agents of the parties of the second part shall have the right to make the through rate on west-bound business until such dispute shall be adjusted by arbitration as herein provided. A reciprocal right in respect of east-bound business is in all respects to be accorded to the parties of the first part. To save expense and to prevent disagreement, it is agreed that at the principal competing points in the East and West the soliciting agents shall be joint agents, and be jointly appointed.

(6.) MUTUAL AGREEMENT TO "POOL" NEW ORLEANS AND  
GALVESTON TRAFFIC, AND NOT DISCRIMINATE  
AGAINST MISSISSIPPI TERMINI.

It is further mutually agreed that all unconsigned business, meaning all business whereof the route has not been designated in advance, destined for points West of El Paso, received by the said Texas and Pacific Railway Company, shall be turned over to the Galveston, Harrisburg and San Antonio Railway Company at the Junction, or to the Southern Pacific Railroad Company at El Paso, as the case may be; and all such "unconsigned" business received by the Southern Pacific Companies and destined to places east of the "Junction" reached by the Texas and Pacific Railway and its connections north of Shreveport, La., and west of the Mississippi River, shall be delivered to the Texas and Pacific Railway Company at the "Junction," or at El Paso, as the case may be. The gross earnings on all business passing over either of these roads between El Paso, or the Junction, and New Orleans, shall be divided equally; and the gross earnings on all business passing over either of these roads between El Paso or the Junction and Galveston, shall be divided on the basis of two-thirds thereof to the Galveston, Harrisburg and San Antonio Railway Company and its connections, and one-third thereof to the Texas and Pacific Railway Company and its connections; and the Agents are to divide, as nearly as possible, such business between the two through lines, so that each shall do the proportion of business above allotted.

In the event that either of the said companies of the one party, at either of the termini herein mentioned, shall be unable or shall neglect, or refuse, for any cause, to take the business and to perform the said service in the proportion above named, the company or companies of the other party shall be at liberty, so long as such disability continues, to take such business and perform said service, and shall be entitled to receive the compensation therefor.



The Texas and Pacific Railway Company, the Missouri Pacific Railway Company, the Missouri, Kansas and Texas Railway Company, the St. Louis, Iron Mountain and Southern Railway Company, the international and Great Northern Railroad Company, and the Galveston, Houston and Henderson Railroad Company shall severally take the through business any of them may have to do under this agreement, between El Paso and any point on the Mississippi River, without any discrimination as to rate, or otherwise, in favor of any line, road, or Transportation Company, and with equal dispatch; and this provision applies to business destined to or coming from any railroad east of the Mississippi River.

There shall be no discrimination as to local business by any of the roads of either of the parties as against those of the other party; it being understood that the term "through business," as used in this agreement, applies to traffic carried to and from terminal, common or competitive points; and any point upon the lines of the railways of the parties hereto that may be reached directly by any railroad competitive to either of said roads, is understood to be a competitive point.

(7.) LOUISIANA WESTERN TO USE TEXAS PACIFIC TRACK  
INTO NEW ORLEANS.

The party of the second part further covenants and agrees that the Texas and Pacific Railway Company shall, at the request of the said Huntington, in the event that it shall become desirable in his judgment, to connect the present eastern terminus of the Louisiana Western Railroad at Vermillionville, by a line of railroad therefrom to the Mississippi River, so as to intersect and effect a junction with the road of the New Orleans Pacific Railway Company now consolidated with and forming part of the Texas and Pacific Railway Company), at or in the vicinity of Bayou Goula, take the business of such road and its connections between such point of intersec-

tion and New Orleans promptly, without undue preference or discrimination, as nearly as may be in the time and manner of its own traffic (details of which shall be settled by the respective superintendents or by arbitration, as herein provided for the settlement of disputes arising hereunder); or, at the option of said Huntington, the said Louisiana Western Railroad Company, or any extension thereof, shall have the right to a perpetual joint use, for the passage of its trains from the point of intersection to the terminus of the Texas and Pacific Railway opposite New Orleans, equally with the Texas and Pacific Railway Company, upon such regulations as shall be prescribed by their respective Superintendents, paying therefor six per cent. per annum, semi-annually, upon \$10,000.00 per mile, and one-half of the cost of maintenance, renewals and taxes. In the event of such extension of said line of road to Bayou Goula, or any intersecting point with the Texas and Pacific Railway upon the Mississippi River, then Bayou Goula or such intersecting point shall be treated in reference to the division of business and earnings the same as New Orleans.

(8.) **MUTUAL AGREEMENT NOT TO DUPLICATE ROADS OF EACH OTHER.**

It is further mutually covenanted and agreed by and between the parties hereto, that while the running and pooling arrangements and agreements herein are kept and observed by the parties of the first part, the parties of the second part shall not build nor promote, except through the Executive Committee, in the manner hereinafter provided, directly or indirectly, the building of any other parallel or through line from the junction, or any point west thereof, to the Pacific Ocean, or the tidal waters thereof, or any line duplicating in whole or in part, or the building of any line to connect with any other line so as to duplicate in whole or in part, the said line of roads of the said parties of the first part. And the parties of the first part shall not

build nor promote, except through the Executive Committee, in the manner hereinafter provided, directly or indirectly, the building of any road west of the Mississippi River, which shall be parallel to, or duplicate in whole or in part, the said lines or roads of the party of the second part, or the building of any line to connect with any other line so as to duplicate in whole or in part the said lines or roads of the said party of the second part.

(9.) MUTUAL AGREEMENT NOT TO PURCHASE OR CONTROL  
COMPETING ROADS EXCEPT THROUGH AN  
EXECUTIVE COMMITTEE.

The parties hereto further agree, each with the other, that there shall be an Executive Committee, consisting of C. P. Huntington and Jay Gould and such third person as they may select, and in the event that either of the parties hereto subscribing, or their associates, shall be offered, within the period covered by this agreement, the one-half stock interest in the Atlantic and Pacific Railroad Company, held by the Atchison, Topeka and Santa Fe Railroad Company, or its equivalent in bonds, separately or in conjunction with securities of the said Atchison, Topeka and Santa Fe Railroad Company, or any securities, though less than one-half which may lead to the control of said companies, or either of them, such offer shall be submitted to the said Executive Committee, and no such purchase thereof shall be made, directly or indirectly, except with the sanction of said Committee.

In like manner, should the half-interest in said Atlantic and Pacific Railroad Company, held by the St. Louis and San Francisco Railroad Company, be offered, either separately or in conjunction with securities of said St. Louis and San Francisco Railroad Company or any securities though less than one-half, which shall lead to the control of said companies, or either of them, including the St.

Louis and San Francisco Railroad Company, such offer shall be referred to the said Executive Committee, and no such purchase shall be referred to the said Executive Committee, and no such purchase shall be made, directly or indirectly, except with the sanction of said Committee.

And in the event that either or both of said interests are acquired, or the control of said roads, or either of them, including the St. Louis and San Francisco Railroad, is achieved in any manner, such road shall be transferred to, and held and managed by, said Executive Committee, as may be determined for the interest and benefit of the parties hereto.

(10.) ROAD BETWEEN JUNCTION AND EL PASO TO BE JOINTLY USED BY GALVESTON, HARRISBURG & SAN ANTONIO RAILWAY COMPANY AND BY TEXAS AND PACIFIC COMPANY.

And the said Huntington further covenants, promises and agrees that the Galveston, Harrisburg and San Antonio Railway Company shall execute an agreement to conduct for and in consideration of a pro rata share, according to haul, of the charges as aforesaid, all of the business of the Texas and Pacific Railway Company between Junction and El Paso promptly, without undue preference or discrimination, as nearly as may be in the time and manner of its own traffic (the details to be settled by the respective Superintendents, or by arbitration, as herein provided); or, that, at the option of the Texas and Pacific Railway Company, it shall have the right to a perpetual joint use of the road and telegraph between Junction and El Paso, equally with the Galveston, Harrisburg and San Antonio Railway Company, upon such regulations as may be prescribed by their respective Superintendents, paying therefor six per cent. per annum, semi-annually, upon \$10,000.00 per mile, and one-half of the cost of maintenance, renewals and taxes; and in the event of such election by the Texas and Pacific

Railway Company the interchange of business above provided for in this contract shall be made at El Paso.

(11.) GALVESTON, HOUSTON AND HENDERSON RAILROAD TO  
BE USED BY BOTH PARTIES.

It is further agreed that the Galveston, Houston and Henderson Railroad Company shall conduct all the business of the Galveston, Harrisburg and San Antonio Railway Company and of the Texas and New Orleans Railroad Company between Houston and Galveston, promptly, without undue discrimination, as nearly as may be in the time and manner of its own traffic (the details to be settled by the respective Superintendents, or by arbitration, as herein provided for); or at their option, the Galveston, Harrisburg and San Antonio Railway Company, the Texas and New Orleans Railroad Company, or either of them, shall have the right to perpetual joint use of the said road between Houston and Galveston equally with Galveston, Houston and Henderson Railroad Company, or its successors, as the same may be reorganized, upon such regulations as may be prescribed by their respective Superintendents, paying therefor six per cent. per annum semi-annually upon \$10,000.00 per mile, and one-half of the cost of maintenance, renewals and taxes, said payments to be made by one or the other of said companies as they agree.

(12.) CENTRAL PACIFIC TO PRO-RATE BETWEEN GOSHEN  
AND SAN FRANCISCO.

The said Huntington undertakes and guarantees to procure the assent of the Central Pacific Railroad Company to comply with the provisions hereof, so far as its line between Goshen and San Francisco constitutes a link in the operation of the through line in this agreement provided for, until the Southern Pacific Railroad is completed by a continuous line of its own into San Francisco without the intervention of a ferry.

(13.) SAME TELEGRAPH COMPANY TO DO COMMERCIAL  
BUSINESS OVER ENTIRE ROUTES.

And the party of the first part further agrees that the existing contracts with the Western Union Telegraph Company shall be extended for the further period of ten years, by which all commercial business, so far as the same can legally be done, shall be secured to the said Telegraph Company; but the terms thereof shall not be less favorable to the railroads represented by the party of the first part than the existing contract between the Central Pacific, and other railroad companies, and the Western Union Telegraph Company. This, however, shall not be held to affect or disturb existing contracts east of San Antonio.

(14.) TEXAS PACIFIC TO DISMISS SUITS OR ENTER DECREES  
BY CONSENT AND RELINQUISH CLAIMS TO  
SOUTHERN PACIFIC RAILROADS.

Whereas, there is a suit pending in New Mexico between the Texas and Pacific Railway Company and the Southern Pacific Railroad Company of New Mexico, and also a suit pending in Arizona, between the Southern Pacific Railroad Company of Arizona and the Texas and Pacific Railway Company, in which suits the Texas and Pacific Railway Company claims the way and right-of-way on which the said Southern Pacific Railroad Companies have constructed a railroad through said territories, which claim is disputed and denied by said Southern Pacific Railroad Companies, and nothing in this agreement shall be construed as an admission of such right.

And Whereas, the Texas and Pacific Railway Company claims the title to said road, which claims are disputed and denied by the Southern Pacific Railroad Companies.

And Whereas, the Texas and Pacific Railway Company has, by this agreement, relinquished and released to the said Southern Pacific Railroad Companies all of its right,

title, interest and estate in and to the said way, right-of-way and railroad constructed by the Southern Pacific Railroad Companies in New Mexico and Arizona.

And Whereas, the Texas and Pacific Railway Company is entitled by its charter to make "running arrangements" with any other railroad company or companies.

And Whereas, the consideration to the said Texas and Pacific Railway Company for the said relinquishment and release is the agreement of the said Southern Pacific Railroad Companies, that the said road of the Texas and Pacific Railway Company, and the roads of the three Southern Pacific Railroad Companies and their connections, shall be operated forever as one continuous through line, as aforesaid, and that the gross earnings from all through business passing from one of said Company's lines to the other shall be divided between them in proportion to the distances hauled by each, with allowances for terminal expenses as aforesaid;

Now, therefore, It is agreed that decrees may be entered in said suits in New Mexico and Arizona whereby the right of the Texas and Pacific Railway Company and the three Southern Pacific Railroad Companies to have their respective roads operated and used for all purposes of communication, travel and transportation, so far as the public and Government are concerned, as one continuous line, and the gross earnings from all through business passing from one of said companies' lines to the lines of the others divided between them in proportion to the distance hauled by each, with allowances for terminal expenses as aforesaid, shall be reserved, conceded and established as a perpetual privilege and easement appertaining to the road of each of said Companies in and over the road or roads of the others.

(15.) RIGHT TO MAINTAIN ACTIONS—MUTUAL COVENANT  
AS TO ARBITRATION IN CASE OF DISPUTES.

It is understood that either or any of the said several



railroad companies, parties to this agreement, may maintain any action, either at law or in equity, against either, any or all of the other railroad companies parties to this agreement, to protect any right secured by this agreement, to specifically enforce the same, or to recover damages for the breach of any stipulation in this agreement affecting its interests, and that no objection shall be had or taken to any such action by reason of the non-joinder of parties as plaintiffs; and all clauses in this agreement contained are to be so construed as to secure this right.

It is further mutually agreed between the parties hereto that in case disagreements of any kind shall arise at any time between them or any two or more of the Companies in whose behalf they respectively act, as to any act, or omission to act, under this agreement, or as to the meaning of any clause or provision thereof, that, at the request of either of such parties, an arbitrator shall be appointed by each of the parties so disagreeing, and a third arbitrator shall be chosen by the two so appointed, and the decision of said arbitrators, or a majority of them, given after a hearing, of which both parties shall be duly notified and at which they shall have had an opportunity to be heard, shall be final and binding upon both parties as to the matter or matters in issue between them. And in case of such arbitration, each party to this agreement hereby covenants for himself and itself, its successors and assigns, with each of the other parties to this agreement, and its successors and assigns, that it will forthwith, upon the rendering of any decision as aforesaid, comply with and perform the requirements thereof, and further, will pay any sum or sums of money which it may be required to pay by such award. A failure to appoint arbitrators or to comply with their award or decision shall be a breach of this contract.

#### DISCONTINUANCE OF SUITS AND RELINQUISHMENT IN TEXAS.

All suits between the said companies parties to this agreement, or any of them, except those in which decrees are to be entered as aforesaid, are to be discontinued as soon as practicable after the execution hereof.

And the Texas and Pacific Railway Company shall execute a conveyance for the consideration sum of one dollar, to the Galveston, Harrisburg and San Antonio Railway Company, granting to it the necessary and covevant way and right-of-way and station grounds wherever the said railroad shall cross or be laid upon the lands of the Texas and Pacific Railway Company, whether granted by the State of Texas or otherwise; and shall renounce, release and relinquish all claim, title or interest in and to the said railroad claimed or included in any suit or suits pending in said State. A release is to be procured from G. M. Dodge of right-of-way over any lands standing in his name in Texas.

The agreements and each of them herein are of perpetual obligation.

#### EXCHANGE OF RATIFICATION BY COMPANIES.

The foregoing agreement shall be submitted by the respective parties thereto to the several Boards of Directors of the corporations which they respectively represent, and the same shall be accepted, adopted, ratified, confirmed, made and declared by said several Boards of Directors, to be the act and contract of their respective corporations, so far as the same severally affects them respectively; and thereupon each corporation shall deliver, each to each other corporation, certified copies of its proceedings in the premises, signed by the President and counter-signed by the Secretary thereof, and sealed with its corporate seal, within ninety days from the date hereof.

In testimony whereof the said parties have hereunto

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set their hands, in the City of New York, in duplicate, on the day and year first above written.

C. P. HUNTINGTON,  
JAY GOULD.

It is understood that when the said several companies shall have executed an exchange of ratification as aforesaid, the personal undertakings of Mr. Huntington and Mr. Gould shall cease.

C. P. HUNTINGTON,  
JAY GOULD.

To the introduction of the above mentioned lease and resolution ratifying it, and of the above mentioned contract executed by Gould and Huntington the defendant objected that they were immaterial and irrelevant to any issue, to which objection plaintiff's counsel responded that he was making the offer of these matters for the purpose of meeting the defendant's plea of limitations, wherein it is set up that the general offices had been moved to St. Louis in 1881, and remained there until in 1888; whereupon the court overruled the objections and the defendant took its Bill of Exceptions No. 9, and over the objections the two documents last above set out were read in evidence.

The witness Howard then testified that W. R. Maxwell performed the duties of Assistant Secretary of the I. & G. N. R. R. Co., at Palestine, and he thought he resided in Palestine during the period of 1881-1888, and that he was the custodian of the Company's stock books at Palestine, and H. B. Kane was General Claim Agent of the I. & G. N. R. R. Co., with headquarters at Palestine during a portion of that period. The witness could not clearly state how long Mr. Kane was such Claim Agent at Palestine, he, the witness, being in St. Louis and working for the Missouri Pacific, Texas & Pacific, the I. & G. N., and other roads in consolidation, at that time, being paymaster for them. That he thought there was a record

in the minutes showing who was Assistant Secretary and General Claim Agent throughout that period, or on the payrolls or in the Treasurer's records. That Maxwell was shown by the minutes to have signed them as Assistant Secretary, in April, 1883, and also as late as 1887, and was then living at Palestine, and he lived and performed the duties of Assistant Secretary there until he died some time between 1887 and 1888, when Kane was elected Assistant Secretary, and as such signed the minutes in 1888, and so continued for several years.

The witness was next asked to show from the minutes who was General Manager of the I. & G. N. R. R. Co. during the Bonner-Eddy receivership, and up to the death of Eddy, and whether or not Eddy, while he was such General Manager, was authorized to and did sign a confession of judgment in favor of Gould for a large sum against the I. & G. N. Railroad, to all of which the defendant objected that it was immaterial and irrelevant, which objection being overruled by the court, and defendant excepted and took its Bill of Exception No. 10, and over the objection, the witness testified from the minutes that a resolution was passed appointing Eddy General Manager of the I. & G. N. R. R. Co., and that this resolution was during the receivership of that company, and, furthermore, that by that resolution he was authorized and directed to execute a power of attorney in the name of the company, and to confess judgment in the suit by Gould upon notes of the company, as provided in the resolutions of the Executive Committee. The receivership was begun in 1888, and the minutes show that on February, 1889, Eddy signed a formal confession of judgment in favor of Gould against the I. & G. N. R. R. Company. It was stated to the court by plaintiff's counsel that the purpose of this evidence was to show that Eddy was performing the duties of General Manager, as well as receiver, at the time in 1889 when Jas. S. Hogg, Attorney General of Texas, protested by telegram, ad-

dressed to Bonner and Eddy, against a threatened removal of general offices from Palestine, which removal did not take place, and which telegram was exhibited to the court, but not to the jury, and later, plaintiff's counsel announced to the court that on the predicate laid they would not offer in evidence the telegram from Attorney General Hogg, and the same was not offered or introduced in evidence.

The witness testified that a majority of the boards of directors of the I. & G. N. R. R. Co. from 1881 up to in 1889 were residents of Texas. In 1889 they were all Texas men, and so in 1888, and resided in Texas.

The witness here corrected his previous testimony, and stated that on account of the injunction, no directors' meetings were held in 1890, 1891 and 1892.

Before the defendant cross-examined the witness Howard it was agreed, on the instance of the defendant, and stated in evidence to the jury, that the minutes of the H. & G. N., of the International Company, and I. & G. N. R. R. Co., were turned over to the counsel for the plaintiffs by the defendant, and that they have investigated those minutes, and that the only matters found by them which they think relevant are those portions thereof which they have introduced in evidence.

The defendant then cross-examined Howard.

The witness said the minutes of the H. & G. N. R. R. show that the annual meetings of directors and stockholders, from the beginning up to 1873, of that company, were held in Houston, Texas, and some of the meetings, other than annual, in New York, and some in Houston, being special meetings; and that the I. & G. N. R. R. Co. and the defendant are shown by the minutes to have held special meetings of the stockholders and directors in New York. And that the first meetings of the stockholders and directors, that is, annual meetings, of the International were held at Hearne, Texas, and afterwards in Houston, Texas. The H. & G. N. and International Com-

panies consolidated, as appears above, in 1873, into the I. & G. N. R. R. Co., the annual meetings of which were held in Houston, Texas, until it moved to Palestine, in 1875.

Witness came to Texas in 1871, in the service of the International Railroad, first in the engineer corps, then in different positions; that the road had its headquarters up to the latter part of 1872 at Hearne, Texas, and then moved them to Houston, Texas, the witness thinks about December, 1872, or January or February, 1873, though he cannot be positive as to the date. When the International moved its domicile and offices to Houston, it domiciled in Houston in the same building with the H. & G. N. R. R., in one building, the two roads occupying separate offices for a few months, but the minutes show they were consolidated actually in September, 1873, when the consolidated corporation became known as the I. & G. N. R. R. Co., and the consolidation became complete, and there was thenceforward only one General Superintendent of the consolidated road, one Auditor, one General Freight Agent, one Chief Engineer. From that time, the annual meetings of the I. & G. N. R. R. Co., the consolidated company, both of stockholders and directors, was held in Houston, Texas, and some of the special meetings in New York, and the road was operated from Houston, Texas, up to June, 1875, and the whole direction was from that point up to that date.

The witness was in the Auditor's and Treasurer's offices during this period, as a clerk, and lived in Houston something over 2 years in these capacities. On April 5th, 1875, a resolution was passed by the directors of the I. & G. N. R. R. Co., which has been read in evidence, moving to Palestine, and the witness moved with the general offices to Palestine, some time in June, 1875. He was then in a very subordinate position, and did not, at that time, hear of any such alleged contract as is now sued on. The witness stated that he was not then in the confidence of the

general officers, and they did not communicate with him nor advise with him as to what caused them to move. At Houston, in 1875, the witness did not think there was over 40 or 50 men in all the general offices. There were then an Auditor, Secretary and Treasurer. The witness is now Secretary and Treasurer of the defendant. There was a General Freight Agent, as head of the traffic department, who was also, to the best of his recollection, General Passenger Agent; and a General Superintendent, who performed the duties of General Agent. This last position was filled by H. M. Hoxie when the headquarters were moved to Palestine. At present, there are more than three times as many employes in the Auditor's office alone than were in 1875 in all of the general offices. Houston then had a population of six to eight thousand. Witness heard nothing, at the time of the moving, of any contract with plaintiffs; but he did hear a statement and discussion as to why the headquarters were moved to Palestine among the clerks, who were then his associates, the talk being that there was dissatisfaction with the conditions in Houston, and that Hoxie had decided to move to Palestine on that account.

At that time, in 1875, the following persons constituted the general officers of the railroad and of the I. & G. N. R. R., to wit: The General Manager, or person performing his duties, the Auditor, the General Freight Agent or Traffic Manager, the General Passenger Agent, the Chief Engineer, the Treasurer or Treasurer and Secretary, and, perhaps, the head of the Legal Dept. These persons constituted, the witness considered, the general officers of a railroad in 1875, but would now constitute only a part of them. There was no General Fuel Agent in 1875 or 1872, but the witness would consider him a general officer now, but he would not consider the Claim Agent a general officer, nor would he so consider the Master Mechanic, though he is the head of a department, and was then and is now under the General Manager. The Freight Claim



Agent is not a general officer, he is under the Auditor's Department now. The Master of Transportation is now called a Trainmaster, under the General Superintendent's Department, and so are the Division Superintendents under whom the Trainmasters now come. The Trainmaster is not a general officer.

The general offices and headquarters of the road were moved to Palestine in 1875, where the general offices remained until in August, 1881, when they went to St. Louis, Mo., all of them, but the primary records, being the minutes of the board of directors, stockholders and stock books remained at Palestine; the other records were moved to St. Louis. The majority of the directors, during the period from 1881 until in 1889 (during which he was in St. Louis), were citizens of Texas, and not residents of Palestine, but of different places. Witness became a director first in 1881, and ceased to be a director in 1883, as he was then living in St. Louis, and again became a director in 1893, and remained such of the consolidated I. & G. N. R. R. Co. down to 1911.

The general offices remained in St. Louis from August, 1881, until May, 1888, where also the general offices were, and whither they took all their employees in 1881, who did not resign their positions. From in 1881 to in 1888 these officers and offices remained in St. Louis, Mo., and the business and operations of the I. & G. N. R. R. Co. were conducted from St. Louis, and in 1888 they returned to Palestine. During that St. Louis period the whole operation of the railroad in Texas was conducted from St. Louis, Missouri.

When the general offices were moved from Palestine to St. Louis, there were in them from 100 to 125 employees, the mileage of the road was not then as great as that of the defendant, but the whole general offices, bag and baggage, were removed to St. Louis, and remained there during the time stated, carrying on the business of the road from that point for approximately seven years. The wit-

ness became Secretary of the I. & G. N. R. R. Co. in 1892; he became Paymaster in 1875, and Cashier in 1888, or Assistant Treasurer. During the St. Louis period he resided in St. Louis, and was paymaster. To recapitulate: In 1871 he came to Texas and entered the service of the International Road in the Engineers' Corps; he came to Houston with the headquarters, from Hearne; clerked in the Auditor's Department, then a clerk in the Treasurer's Department; then went with the headquarters to Palestine in 1875, and became Paymaster, and then in 1881 to in 1888 was in St. Louis, Mo., as Paymaster; then he became Cashier, and in 1892 Secretary and Treasurer, and remained such of the I. & G. N. R. R. Co., until it was sold out, and has since been, and is now, Secretary and Treasurer of the defendant. The move to St. Louis, from 1881 to 1888, was made in consolidation of the operation of the I. & G. N. Railroad Company with the Missouri Pacific, the Iron Mountain, the Missouri, Kansas & Texas, and the Texas and Pacific Railway Companies. There was no Auditor or General Manager or Treasurer or Traffic Manager, or General Passenger Agent for the I. & G. N. R. R. Co. during the St. Louis stay, but there was just one head of each department at St. Louis for all the railroad companies as consolidated, save there was a separate Secretary for each company. Mr. Maxwell had charge of the primary records of the I. & G. N. R. R. Co. at Palestine during the St. Louis period, as Assistant Secretary. All of the general officers and their employes were actually in St. Louis from 1881 to 1888.

The defendant here introduced a list of the executive officers of the International, H. & G. N. and I. & G. N. Railroad Companies, during their lives, prepared by Mr. Howard from the minutes, as follows:

## H. &amp; G. N.

General Manager	President	V.-President	Secretary
1867 to 1870	{ Jas. Mitchell C. G. Young		{ H. D. Taylor L.L.Hohenthall
1871	{ C. G. Young G. A. Grow		{ T. L. Blanton J. S. Wetmore
1872	"		Robert Avery
1873	"		"

## INTERNATIONAL.

Gen. Manager	President	V.-President	Secretary
1870	{ H. G. Marquard John S. Barnes	Jas. W. Barnes	{ Jno. S. Barnes P. N. Spofford
1	"	"	D. P. Barhydt
2	"	"	"
3	G. A. Grow	"	J. S. Wetmore

## I. &amp; G. N. R. R. CO.

Gen. Manager	President	V.-President	Secretary
1874	G. A. Grow	T. W. Pearsall	Ira. H. Evans
R. Somers Hayes			
5	Saml. Sloan	R. S. Hayes	"
6	"	"	"
7	"	"	"
8	"	"	"
9	"	H. M. Hoxie	"
1880	R. S. Hayes	{ T. W. Pearsall H. M. Hoxie	Dr.D.S.H.Smith
1	"	"	"
2	Jay Gould	{ R. S. Hayes T. W. Pearsall	"
3	"	"	"
4	"	{ R. S. Hayes A. L. Hopkins	"
5	"	"	"
6	"	H. M. Hoxie	"
7	"	S. H. H. Clark	"
8	"	"	"
9	(No meeting account injunction Atty. General.)		
1890	"	"	"
1	"	"	"

General Manager	President	V.-President	Secretary
2	Jay Gould	{ S. H. H. Clark H. B. Kane	A. R. Howard
3	Geo. Gould	"	"
4	"	"	"
5	"	"	"
6	"	"	"
7	"	"	"
8	"	{ S. H. H. Clark Leroy Trice	"
9	"	{ Frank J. Gould S. H. H. Clark Leroy Trice	"
1900	"	{ Frank J. Gould Leroy Trice	"
1	"	"	"
2	"	"	"
3	"	"	"
4	"	"	"
April	5	"	"
November			
November	6	"	"
	7	"	"
	8	{ Frank J. Gould H. W. Clark	"
	9	{ Frank J. Gould T. J. Freeman	"
	10	"	"

The witness testified that Ira H. Evans was Secretary commencing in 1874 down to in 1879, when he was succeeded by D. S. H. Smith, who continued down into 1889, and that both of these men are alive, Evans at Austin, and Smith in St. Louis. Witness, at the request of defendant's attorneys, tried to get Smith to attend the trial but he refused. Evans was very close to Hoxie and Sloan and the general officers while he was Secretary. He lived in Palestine almost opposite the general office building, and quit the railroad as Secretary in 1879. The witness thinks he was in charge of the land department after that, and that he was also a director.

The witness next inspected a list of directors prepared

by himself, showing the directors of the H. & G. N. and the International Railroad, and after the consolidation the I. & G. N. R. R. The witness looked over this list and testified that of those directors, checking the list as far down as the year 1885, all of the directors of all the roads holding that position before the year 1885 were dead, except Smith and Evans. Evans had been a director of the I. & G. N. R. R. from April 5, 1875, to 1880, Evans again being a director in 1882, and remained director until 1885 and afterwards. Smith became a director of the I. & G. N. R. R. on April 5, 1875, and was a director in 1875-1876, 1879-1880. That of the executive officers of the roads, other than directors, before 1885, they were all dead except Smith and Evans, who were Secretaries, and except Pollock, now living in Missouri, who was the Accountant or Auditor, and who entered the service after the general offices were moved to Palestine in 1875, Hoxie, Noble, Hays, Grow, Van Duersen, and all the others, with the exceptions stated, are dead.

On re-direct, by plaintiffs, Howard testified that Joe Herring was one of the engineers when the railroad was being built, and was Superintendent during a part of the St. Louis period, between 1881-1888, and was living, when this suit was brought, and until about six months ago, when last heard of by witness, in Joplin, Missouri, and witness understands he died in California. He had been connected with the railroad in some capacity since its construction, and was Chief Engineer, or something of that kind, at one time.

In 1875 the witness would estimate the payroll of the general office as not over \$10,000 or \$12,000.00 per month, and in 1911 about \$20,000.00 a month, and after the move to Houston of the defendant, about \$40,000.00 per month, making the aggregate payroll of the general offices at this time nearly half a million dollars per annum. He would have to examine the records to determine precisely.

Judge Freeman was Vice-President of the I. & G. N.

R. R. Co. just prior to Sept. 1, 1911, and he did not reside at Palestine. He was also the General Manager in his quality as Receiver. At the same time he was Receiver under appointment of the Federal court, and the general officers, who were operating the property just before the removal to Houston, were officers of the Receiver. Judge Freeman, as Receiver and General Manager, had his office at Houston, but the other general officers engaged in the operation of the railroad resided at Palestine, where the general offices had been for years.

The Traffic Manager under the Receiver was N. M. Leach.

"Question. Now, Mr. Howard, who has actually performed the duties of Traffic Manager of the I. & G. N. R'y Co. since the removal of the general offices from Palestine? Answer. We have no Traffic Manager in the list of officers. Mr. Booth is the General Freight Agent of the I. & G. N. Question. State to the jury just what duties are performed by Mr. Booth, and who was Traffic Manager prior to the removal of these shops? Answer. There is an Assistant to the President in New Orleans, and he handles all business that he can handle of the I. & G. N. under the President, and his title is Assistant to the President. Question. As Traffic Manager, when he was called Traffic Manager, he was to handle the freight business of the I. & G. N. R. R. Co. subject to the direction and supervision of the President? Answer. Yes, sir, I understand so. And that is the position held by the party at New Orleans? Answer. Well, he is Assistant to the President, and handles all freight business of the road that he can under the President. Mr. Leach, as Assistant to the President, has had eight or ten subordinates under him in New Orleans. Since Sept. 1, 1911, all the general officers of the defendant, except Mr. Leach, if he is a general officer, as suggested by the question, have resided in Houston.

"When I undertook to state in my direct examination

who were general officers, I meant by 'general officer' any man who is placed at the head of a department by a railroad company, which department has been set up by the railroad company for its own convenience.

"When I stated that there was a general manager of the I. & G. N. R. R. Co. living in St. Louis from 1881 to 1888, I meant to say that there was a General Manager living there, operating the I. & G. N., and also operating the M. K. & T. and the Mo. Pac., and others. Question. Now, Mr. Howard, state whether or not it is a fact that in so far as the I. & G. N. R. R. Co.'s line was concerned that the officers of that Company consisted of a board of directors, during the period from 1881 to 1888, a majority of whom resided within that time in Texas, and the Assistant Secretary, and, at least during most of the time, a Claim Agent, is that a fact, and that all of these officers resided in Texas? Answer. Yes, sir. There was also a Superintendent who actually directed and controlled the operation of the railroad, and who resided throughout that period at Palestine, and there was a Master Mechanic there who had charge of the shops. The shops were operated at Palestine from 1881 to 1888 just as before."

The general office building at Palestine was constructed about 1878, and is built of brick, and is located on about ten acres of land, and is three stories high, and was large enough to take care of the men and business in 1879, but not at the date of removal to Houston. In 1911 offices were rented in two buildings in Palestine. "I never heard of anybody in Palestine undertaking to charge any exorbitant rent for outside offices." The different offices in the general office building at Palestine each bore an appropriate sign as, "Treasurer," "General Manager," "General Freight Agent," etc.

On being re-crossed by defendant, Mr. Howard stated:

In 1911 the building in Palestine was crowded and inadequate, and not fire-proof, and poorly adapted to its



purposes, and inconvenient. The records should be kept in a fire-proof structure. There was a vault in that building, but insufficient, and the road had lost papers in Palestine by fire, some of importance. These records belonged to the Auditor. The building that was burned was situated down near the track running towards Houston. On the 10 acres are part of the yards, but not the shop grounds. When the move was made to St. Louis, everything was taken except the primary records, and all of the books, with this exception. The signs were left over the different offices, he thought. Division offices were maintained in Palestine during the St. Louis period.

18. The plaintiffs next introduced the bond record of Anderson County, and, as preliminary thereto, agreed, at defendant's request, that all of the signers of the petition calling for the election, as shown in the record, were good and representative citizens, except, perhaps, two, and that all of the persons after those whose names the letter "D" was placed, are dead. It was also agreed that all of the persons opposite whose names on the petition the letter "L" was written were lawyers, living in Palestine. The complete record, taken from the minutes of the County Court of Anderson County, was then introduced. It was agreed, at defendant's request, that there was no other matter relating thereto upon the minutes, except an order, being below set out, and relating to the bond given by the H. & G. N. to secure the maintenance of the depot, and this record is copied in full, eliminating repetitions. The record is certified to as a complete, true and correct copy of the proceedings of the Commissioners' Court, the certificate being made by the Clerk of the Court Court of Anderson County, January 4, 1914.

In County Court,  
Anderson County.

At a Special Term, Monday, May 6th, A. D. 1872.

Be it remembered that at a regular term of the County

Court of said Anderson County, begun and held at the Court House of said County, at the town of Palestine, on Monday, the 25th day of March, A. D. 1872, the following order was made and adopted, to wit:

"At a regular term of the County Court of Anderson County, beginning March 25, 1872, the following order was made:

"County Court

& order and for other purposes.

"In the matter of granting a Donation from Anderson County, to the Houston & Great Northern Railroad.

"Whereas, the following petition signed by more than fifty freeholders of Anderson County, in the State of Texas, has been presented to the County Court of Anderson County, that is to say:

The State of Texas,  
County of Anderson.

"To the Honorable, the County Court of Anderson County, Texas:

"The undersigned freeholders of said Anderson County, in accordance with the Act of the Legislature of the State of Texas, approved April 12th, 1871, authorizing counties, cities, and towns, to aid in the construction of railroads, and other works of internal improvements, do respectfully petition your Honorable Court to order an election to take the opinion of the electors of said County on the following proposition, that is to say: Whether said Anderson County will donate to the Houston & Great Northern Railroad Company, the sum of One Hundred and Fifty Thousand Dollars, in the bonds of said County, subject to the provisions of the Act of the Legislature above referred to, said bonds to be payable in twenty years, and to bear interest at the rate of eight per centum per annum, the interest to be due and payable on the first day of January of each year, counting from the first full year which shall elapse after said bonds shall be issued, the principal and interest of said

bonds to be payable in United States Currency, said bonds to be donated to said Railroad Company, to aid them in the construction of their railroad, through said Anderson County from the Northern Line of Houston County in said State, to its intersection with the International Railroad at the town of Palestine, in said Anderson County, and to secure the establishment and maintenance of a Depot of their said Railroad in one-half mile of the Court House, in said town of Palestine, by or before the 1st day of July, A. D. 1873. The bonds for said one hundred and fifty thousand dollars to be delivered to said Houston and Great Northern Railroad Company as soon as their said Railroad shall be completed from the North Boundary of said Houston County to its intersection with the International Railroad at said town of Palestine, and so soon as their depot shall be established within one-half mile of the Court House of said town of Palestine and their cars commence running regularly thereto, provided these things be done by said 1st day of July, 1873.

“We also respectfully petition your Honorable Court to submit to the electors of said Anderson County, at the same time, and as forming a part of the foregoing proposition, the question: Whether they shall donate fifty thousand dollars in County Bonds to the Railroad Company which shall first build a railroad of the class and character of the International and Houston & Great Northern, between said town of Palestine and the North boundary of said Anderson County and connect with the International at said town, and build and maintain a depot within one-half mile of the Court House of said town of Palestine, said bonds to be delivered to the Railroad Company which shall build said Railroad, and run its cars between said North boundary of Anderson County, and said town of Palestine, and comply with the foregoing provisions within three years from the date at which this proposition shall be ascertained, by a count of the vote, to have been adopted by the people of

said Anderson County. But if said Railroad be built in three years from that date then this part of this proposition is to be held for naught, said fifty thousand dollars in county bonds to be payable in twenty years, with interest at the rate of eight per centum per annum, and the principal and interest to be payable in United States Currency.

R. B. Jowers, d	Daniel Hollingsworth, d
J. B. Henderson, d	Michael Ash, d
J. B. Hiner, d	J. J. McBride, d
Jno. F. Weidemeyer, d	H. J. Hunter, d
J. A. Tindel, d	S. S. J. Moore, d
J. L. Helm, d	D. C. Hunter, d
Amerald Lick, d	B. F. Broyles, d
J. T. Henderson, d	W. H. Bowen, d
James M. Mears, d	R. C. Parks, d
B. Hollingsworth, d	H. B. Phillips, d
J. K. Godley, d	J. Crawford, d
G. D. Kelley, d	Fred Mills, d
G. E. Christ, d	W. J. Averyt, d
A. Joost, d	E. Carney, d
J. B. Miller, d	D. A. Calhoun, d
J. L. Sandifer, d	F. Bernhardt, d
W. A. Miller, d	Thos. M. Colley, d
J. C. Simpson, d	W. W. Parks, d
Sam Heidelberg, d	H. H. Link, d
W. M. Shumatto, d	H. H. Norgen, d
John H. Reagan, d-l	R. Jesse Royall, d
Jim Langston, d	Jeff Word, Jr., a-l
J. R. Emerson, d	J. R. C. Jerry, d
A. T. Rainey, d-l	Marsh Glenn, d-l
J. W. Ewing, d	Thomas J. Johnson, d-l
E. J. DeBard, d	T. T. Gamage, d-l
A. S. Pinson, d	J. N. Garner, a-l
J. W. Ozment, a	Virgil Campbell, d
R. McClure, a-l	R. B. Petty, d
J. L. Whitescarver, d	Jno. J. Word, d-l
Phillip Unger, d	Jno. H. Morrison, d

H. C. Swanson, d  
T. J. Word, d-l  
Eli Bailey, d  
O. E. Brittain, a  
Jno. G. Scott, d-l  
S. Kolstad, -a  
W. O. Spencer, d  
J. R. Palmer, d

R. H. Small, d  
E. Collins, d  
Jas. L. Hanks, d  
Edward Smith, d-l  
J. F. Watts, a  
J. H. Gee, d  
Ed Davis, d  
N. W. Hunter, d-l."

"And whereas said petitioners pray this court to order an election to take the opinion of the electors of said Anderson County as to whether said County of Anderson will donate to the Houston and Great Northern Railroad Company the sum of One Hundred and Fifty Thousand Dollars in the bonds of said Anderson County, said bonds to bear interest at the rate of eight per centum per annum and to be payable in twenty years from the date at which said bonds shall be issued, the interest and principal of said bonds to be paid in United States Currency, and the interest on said bonds and two per centum of the principal to be paid annually, on the first day of January of each year; that is to say, the first payment of said interest and of said two per centum of principal shall be made on the first day of January succeeding the first full year after said bonds shall have been issued. Said donation to be made and said bonds to be issued upon the following conditions, that is to say, that the said Houston and Great Northern Railroad Company shall build their said Railroad, of the same class and style of the portion of said road which is now built, from the North boundary of Houston County to its intersection with the International Railroad in the town of Palestine in said Anderson County, and build and maintain a depot of its said road within one-half mile of the Court House in said town of Palestine, and commence to run their cars regularly thereto, by or before the 1st day of July, 1873."

"Said One Hundred and Fifty Thousand Dollars of

the bonds of said Anderson County are to be issued to said Houston and Great Northern Railroad Company on the completion of the said road from said North boundary of Houston County to its intersection with the International Railroad at said town of Palestine, and on its compliance with the other conditions imposed on it as above set forth."

"And the court in accordance with the request of the aforesaid petitioners, also submit to the electors of said Anderson County, as a part of the foregoing proposition, and to be carried by their vote for or against the same, the question whether they will donate fifty thousand dollars, in the bonds of said Anderson County, to the Railroad Company which shall first build a Railroad of the class and character of the International Railroad and Houston and Great Northern Railroad between said town of Palestine and the North boundary of said Anderson County, and build and maintain a Depot thereof within one-half mile of the Court House of said town of Palestine. Provided that said Railroad from Palestine to the North boundary of said Anderson County shall be built, within three years from the date at which this proposition shall be adopted (if adopted) by the vote of the people of said Anderson County, said bonds to be issued to the Company, which shall build the first Railroad as above provided, between said town of Palestine and said North boundary of Anderson County and upon its compliance with the other conditions above mentioned, on the completion of the same, said bonds to be paid in twenty years, to bear interest at the rate of eight per centum per annum, the interest and two per centum of the principal to be paid annually on the first day of January of each year, the principal and interest of said bonds to be paid in United States Currency."

"Now therefore, under and by virtue of the authority vested in this Court by law, it is hereby ordered that an election be held at the Court House in the town of Palestine, in said County of Anderson, commencing on Wednes-

day, the first day of May, A. D. 1872, and to continue from day to day until Saturday the 4th day of said month of May, inclusive; the polls of said election to be opened at eight o'clock in the forenoon of each day, with a recess from 12 o'clock Noon till one o'clock P. M. of each day."

"And the following named persons are hereby appointed to be managers of said election, to wit: H. J. Hunter, John H. Morrison, and Willie Cowen, said election to be for the purpose of taking the opinion of the electors of said Anderson County, upon the question whether said County will make the donation above mentioned to the Houston and Great Northern Railroad Company, and to such Railroad Company as shall build the said Railroad from Palestine to the North boundary of said Anderson County. The vote to be 'for the proposition' or 'against the proposition,' said Managers to count the vote so taken as the law directs, and to make the return of said vote to Wm. T. Smith, Esq., the Presiding Justice of said County Court, on Monday the 6th day of May, A. D. 1872, and that the Clerk of this Court shall give notice to the Sheriff of this order."

"And it appearing to the court that pursuant to the aforesaid order of said Court, made on the second day of the term of said Court, being the 26th day of said month of March, an election was held by H. J. Hunter, one of the managers aforesaid, and by Fred Mills and J. F. Watts, who were substituted in the place of Willie Cowen, who was absent, and of John H. Morrison, who declined to act as one of the said Managers, on the first, second, third and fourth days of May A. D. 1872, to take the sense of the electors of said Anderson County, on the aforesaid proposition, that said County of Anderson shall donate to the Houston and Great Northern Railroad Company One Hundred and Fifty Thousand dollars, in the bonds of said County, on the terms and conditions mentioned and set forth in the aforesaid order of said County Court, and fifty thousand dollars in the bonds of said County



of Anderson to the Railroad Company which shall build the first Railroad, of the same class and character of the International and Houston and Great Northern Railroad Company from said town of Palestine to the North Boundary of said Anderson County, and build and maintain a depot of said Railroad within one-half mile of the Court House of said town of Palestine, provided that said Railroad shall be built within three years from this date to entitle such Railroad Company to said Fifty Thousand Dollars of the bonds of said County, said bonds to be issued on the conditions and upon the limitations set out in the aforesaid order of the 28th of March, A. D. 1872."

"And it appearing to the satisfaction of this court that a Special Registration of the qualified voters of said County of Anderson, preparatory to said election has been made according to the law in such cases made and provided, at which registration One Thousand and eight qualified voters were registered, and it appearing to the court that at the election aforesaid, held on the first, second, third and fourth days of May, A. D. 1872, that seven hundred and sixteen of said qualified electors voted 'for the proposition,' and that ninety-three of said qualified electors voted 'against the proposition,' and it further appearing to the court that, at said election, more than two-thirds of the qualified electors of said Anderson County have voted for the proposition, it is hereby declared that said proposition has been adopted."

"And it is further ordered by the court that upon the completion of said Houston and Great Northern Railroad, by said Company, to its intersection with the International Railroad at the said town of Palestine of the same style and class and character as of the part of said Railroad now built, and upon the establishment of a Depot of its said Railroad, within a half-mile of the Court House of said town of Palestine and upon the commencement of the said Railroad Company to run their cars regularly to their depot at said town of Palestine,

then the said County of Anderson, will issue to the said Houston and Great Northern Railroad Company the bonds of said County with the coupons attached for said sum of One Hundred and Fifty Thousand Dollars, payable in twenty years, under the provisions of the act of the Legislature of the State of Texas, authorizing counties, cities and towns, to aid in the construction of Railroads, and other works of internal improvements, approved April 12th, 1871, with interest at the rate of eight per centum per annum, the interest payable annually on the first day of January of each year; the first payment of interest and of two per centum of the principal indebtedness to be made on the first day of January succeeding the first full year after the completion of said Railroads, and the principal and interest of said indebtedness to be paid in United States Currency after the County Court of said Anderson County shall have first levied a tax on the taxable property situated in said County sufficient to pay the annual interest, and not less than two per cent annually of the principal of said bonds, besides the expense of assessing and collecting the same, said bonds to be of the denomination of five hundred dollars each, with coupons attached to each for the annual interest thereon, and upon the condition precedent that said Railroad shall be completed and the other aforesaid conditions complied with by the said 1st day of July, 1873."

"And it is further ordered by the court that upon the completion of the building of the Railroad hereinbefore mentioned which shall be first built from its intersection with the International Railroad at the town of Palestine to the North boundary of said Anderson County of the class and character of the International and Houston and Great Northern Railroad to its intersection with the International Railroad at Palestine, and upon the establishment of a Depot at such point of intersection of said Railroad within one-half mile of the Court House in said town of Palestine, and when said Railroad Company

shall commence the running of their cars regularly over their said Railroad from its intersection with the International at said town of Palestine to the North boundary of said Anderson County, then the said County of Anderson will issue to such Railroad Company, Fifty Thousand dollars of the Bonds of said County, in sums of Five Hundred Dollars each, payable in twenty years from the completion of said work and the issuance of said bonds, bearing interest at the rate of eight per centum per annum, with coupons attached, under the provisions of the Act of the Legislature of the State of Texas, authorizing counties, cities and towns, to aid in the construction of Railroads and other works of internal improvements, approved April 12th, 1871, the interest and two per cent of the principal indebtedness payable annually on the first day of January of each year; and the principal and interest of said indebtedness to be paid in United States Currency, after the County Court of said Anderson County shall have first levied a tax, on the taxable property situated in said County sufficient to pay the annual interest and not less than two per centum annually of the principal of said bonds, besides the expense of assessing and collecting the same, Provided that the bonds aforesaid shall not be issued for said purpose unless said Railroad shall be built, and the other above named conditions shall have been complied with within three years from this date."

"It is ordered that the court stand adjourned until tomorrow, Tuesday, morning at 9 o'clock A. M., May 7th, A. D. 1872."

Court adjourned until next regular term.

January 29, 1873.

"County Court,  
Order.

"In regard to levying and issuing County Bonds to the Houston & Great Northern Railroad Company.

"Now comes Galusha A. Grow, President of the Houston & Great Northern Railroad Company, and presents

his petition asking that the County Court now proceed to levy an annual tax upon all real and personal property situated in Anderson County, which shall be sufficient to pay the annual interest, to wit: Eight per cent per annum, and not less than two per cent annually of the principal of the One Hundred and Fifty Thousand Dollars County Bonds, heretofore voted as a subsidy to the Houston and Great Northern Railroad, by the citizens of Anderson County, which petition is in words as follows, to wit:

"To the Hon. the County Court of Anderson County, Texas:

"Your petitioner, the Houston and Great Northern Railroad Company, a body politic and corporate by 'An Act of the Legislature of said State entitled an Act to incorporate the Houston and Great Northern Railroad Company,' approved 22nd of October, 1866, respectfully represents that having accepted the proposition of the County of Anderson aforesaid of date the 26th day of March, 1872, and approved by two-thirds of the qualified voters of said County at an election held on the first, second, third and fourth days of May, 1872, to donate to said Houston & Great Northern Railroad Company, One Hundred and Fifty Thousand dollars in the bonds of said County on certain conditions therein specified, said Houston and Great Northern Railroad Company fully performed and complied with all the conditions upon which said proposition was made in the month of December, 1872, and prior to the 31st day of said month. By the terms of said propositions said bonds were to be issued to petitioner on its compliance with the conditions contained in said proposition, and having fully complied therewith your petitioner prays that the truth of these allegations be enquired into and if satisfied they are true, that said bonds be issued in accordance with said proposition, and the laws of the State, and delivered to petitioner, and in duty bound, etc.

"Galusha A. Grow,

"President H. & G. N. R. R. Co."

“And it appearing from the records of our said Court, and the papers thereof on file therein that on the 26th day of March, 1872, a petition was presented to our said court signed by more than fifty freeholders of said Anderson County, praying for an election to take the opinion of the electors of said Anderson County as to whether said County would donate to the Houston and Great Northern Railroad Company, the sum of One Hundred and Fifty Thousand Dollars in the bonds of said Anderson County, said bonds to bear interest at the rate of eight per cent per annum, and to be payable in twenty years from the date of their issuance, payable in United States Currency, principal and interest, the interest on which bonds and two per cent of the principal to be paid annually on the first day of January in each year, and the first payment to be made on the first day of January succeeding the first full year after said bonds shall be issued; on condition that the said Houston and Great Northern Railroad Company, would build their said Houston and Great Northern Railroad of the same class and style of the portion of said road then built, from the North Boundary of Houston County, to its intersection with the International Railroad at the town of Palestine, in this County, and build and maintain a depot of said road within one-half mile of the Court House in said town of Palestine and commence to run their cars regularly thereto, by or before the first day of July, 1873.”

“And it further appearing that on the day said petition was presented, our said Court by an order entered on its minutes ordered an election to be held at Palestine, in said Anderson County, on the first, second, third and fourth days of May, 1872, to take the opinion of the electors of said Anderson County on said proposition, and that said order was published three weeks previous to said election in the Trinity Advocate, a newspaper then published at Palestine, in said Anderson County.”

“And it further appearing that an election was held in accordance with the order of our said court, and the

notice thereof, as aforesaid; and that afterwards on the 6th day of May, 1872, the same being the first Monday after the return day of said election, at a special term of our said Court, then held to ascertain and record the result of said election, it was found that two-thirds of the qualified electors of said Anderson County, had voted for said proposition at said election, and said result was then entered of record in our said Court, and it also appearing that the said Houston and Great Northern Railroad Company accepted said proposition and completed all the work in aid of which said donation was proposed prior to the 31st day of December, 1872, and had then, to wit: the 31st day of December, 1872, fully performed and complied in all respects with all the conditions on which said donation was offered."

"And it further appearing that by the terms of said proposition said bonds were to be issued to said Railroad Company on the completion of their said Road from said North boundary of Houston County to its intersection with the International Railroad at said town of Palestine, and on its compliance with the other conditions contained in said proposition, and that said road was so completed, and all of said conditions complied with by the said Houston & Great Northern Railroad Company prior to the 31st day of December, 1872, and that said Railroad Company was then entitled to said donation, and to demand and have said bonds then issued to them; and it also appearing by reference to the latest assessment of the real and personal property situate in said County of Anderson, that said donation of One Hundred and Fifty Thousand Dollars, does not amount to ten per cent of the assessed value of said real and personal property, it is therefore adjudged and decreed that the said Houston & Great Northern Railroad Company was entitled to said donation on the 31st day of December, 1872, and to have said bonds then issued to them of that date."

The order then proceeds to levy an annual tax for the payment of the bonds and to direct that three hundred

bonds of the County for \$500 each, running for twenty years, should be issued and then proceeded to give the form of the bonds, setting forth the form in the order. The latter part of the form of the bonds was as follows:

"This bond is authorized by a vote of two-thirds of the qualified electors of said county at an election held in pursuance of an order of the County Court of the said county and the general laws of this State on the first, second, third and fourth days of May, 1872, to take the opinion of the electors of said county on a proposition to donate to the Houston and Great Northern Railroad Company on certain conditions therein expressed, one hundred and fifty thousand dollars in the bonds of said county, which proposition was accepted and all of said conditions fully performed and complied with by said Houston and Great Northern Railroad Company, as by the records of said court fully appears and by an order of said court requiring the issue of this series of bonds in accordance with said proposition."

"This bond is one of a series of three hundred of like tenor and effect, and is secured by a decree of the County Court of said Anderson County, and the General Laws of the State, requiring and levying an annual tax upon all the real and personal property, in said County of Anderson, to raise an annual fund, sufficient to pay the annual interest and two per cent annually on one hundred and fifty thousand dollars (being the principal) as hereinbefore stipulated, and further by the Constitution of the State providing that the law levying said tax is irrevocable until the principal and interest shall be lawfully paid."

"In witness whereof, the Presiding Justice of the County Court of said Anderson County, here signs his name, and the Clerk of said Court attests with the seal of said Court hereto affixed at Palestine in said County the 31st day of December, 1872.

Attest:  
Clk.

Presiding Justice."



"Endorsements of Comptroller to be printed on back of bond: 'The within bond is registered in the office of the Comptroller of the State of Texas, Austin, ..... day of ....., 1873.'"

.....  
Comp."

"Print on the back the following endorsement:

"For value received, the Houston and Great Northern Railroad Company hereby assigns the within bond to

..... Prest."

"The Clerk of the District Court, and Ex Officio Clerk of the County Court is hereby required to attest such bonds of date December 31st, 1872, with the seal of the County Court."

"Protest of John S. Shattuck of Precinct No. 2, Anderson County, against the issuance of the Bonds and Coupons attached, ordered to be issued to the Houston & Great Northern Railroad Company, January 29th, 1873."

"Now comes John S. Shattuck, J. P. Precinct No. 2, Anderson County, Texas, and protests against the issuance of the bonds amounting to \$150,000 with Coupons thereto attached to the H. & G. N. R. R. Co. and an assessment of One Dollar on the \$100, to pay the interest and sinking fund of the same, on the following grounds, to wit:"

"1st. That said Railroad Company has not established, and maintained a depot building within a half mile of the Court House of the town of Palestine, as required by the contract with said Company, and that if said Bonds are issued at all, they should show on their face that a depot shall be established and maintained, which they do not show."

"2nd. That said Railroad Company has not built, nor has it laid any foundation to build, any Machine Shops at their proposed Depot, as promised by the Agents and friends of said road, the same being the inducements held out to the people of said Anderson County; and on ac-

count of such promises and agreements to build a Round House, and Machine Shops, the majority of those voting for the subsidy cast their votes for the same."

"3rd. That the law under which said subsidy was voted on as protestant has been informed and verily believes is unconstitutional and therefore void."

"4th. That the election held by virtue of a former order of the County Court as protestant has lately been informed was unfair and unjust to the County, and a fraud."

"5th. That two-thirds of the qualified electors of said Anderson County did not vote on the proposition."

"6th. That the Special registration for said election was not taken under any law known to the State of Texas."

"It is ordered that the Court stand adjourned until tomorrow, Thursday, January 30th, 1873, at 9 o'clock A. M."

19. The plaintiffs read in evidence the answer of witness D. S. H. Smith to the 4th interrogatory, and to the first and nineteenth cross-interrogatories, this deposition being taken by the defendant.

To the 4th interrogatory witness answered: That he was in the employ of both the I. & G. N. R. R. Co. and the International Railroad Co.; that he entered the employment of the latter in 1871 and afterwards, when the two roads were consolidated, was employed for the former; he first acted as Land Agent for the International, and afterwards as Treasurer and Paymaster for the I. & G. N. R. R., and that in 1871 he lived at Hearne, and in the fall of 1872 moved down to Houston and in 1875 moved to Palestine, but did not think he was ever in the employ of the H. & G. N. until the consolidation of the two roads. To the first cross he answered that Grow was President of the H. & G. N. R. R. Co. in 1871 and to the end of 1873; but the witness stated that he could not give the exact dates, but that the records would show. And, to the 19th cross he answered that H. M. Hoxie was

General Superintendent of the consolidated I. & G. N. R. R. Co. from the day of its beginning for several years, and was during that time in fact the General Manager of the operation and business of that company in Texas.

20. A. R. Howard, being called by the defendant, testified in its behalf that he never heard any executive officer or director of the H. & G. N. or the International or of the I. & G. N. Railroads in any way mention or refer to the alleged contracts sued on in this case.

21. George A. Wright, one of the plaintiffs, was called as a witness, having been, along with his co-plaintiffs, Ozment, Bowers and Hughes, over the exception of the defendant, excused from the rule, as appears above.

Wright having been sworn, the defendant moved the court before he testified to exclude from the court room and put under the rule, while he was testifying, Ozment, Bowers and Hughes, then in the court room, and all of whom the plaintiffs had stated would be put on the stand, and also that all of these four persons should be excluded from the court room when any one of them was testifying; the ground of the motion being that it appeared that Wright and each of these witnesses would be tendered to give parol testimony, in support of an alleged transaction, claimed to have been entered into in parol over 40 years ago; all the citizens of Palestine being plaintiffs in these cases; and because on account of the great lapse of time, one listening to the other testify, their minds might be swayed and impressed as to what testimony they would give. And that, therefore, upon the grounds stated, it would be an abuse of the court's discretion not to enforce the rule; which motion being considered by the court and was by the court overruled, and the defendant then took its Bill of Exceptions No. 11 to the action of the Court, and over the same Wright testified as follows:

That his name is George A. Wright and that he is a resident of Palestine, Anderson County, Texas, and has resided in that County during his life, with the excep-

tion of four years; and in Palestine a number of years, and is now 67 years old; and that in 1872 he was in the livery business at Palestine, and met Galusha A. Grow at Tyler in 1872, he being accompanied by Charles Noble, an officer of the H. & G. N. R. R. Co., Grow representing himself to be its President, and Noble being its Chief Engineer. The witness stated that he went to Tyler, Texas, at the request of Judge Reagan, and that this was early in the spring, about March, and that he met these two men in Tyler, for the first time. He left Tyler with them early in the morning and carried them down by conveyance 56 miles to Palestine, and reached Palestine about dusk, and carried them to the Osceola Hotel there, where they remained, he supposed, about an hour, for supper; and that the witness, having changed teams, drove them to Judge Reagan's home at Ft. Houston, out from Palestine, where they met Judge Reagan and Mrs. Reagan. The witness was then asked to state what took place between Judge Reagan and Mr. Grow, if anything, in the hearing and presence of himself and Noble; to which question and any answer thereto and any statements of any matters in such conversation or of any conversation participated in between Grow and Reagan, or Grow, Reagan and others on this occasion, at Ft. Houston, which was Judge Reagan's residence, about two miles out of Palestine, the defendant objected as follows:

(1) That it now developed, as shown by the contract with the County introduced by the defendant, that there was a complete and perfectly legal written contract between Anderson County, Texas, and the H. & G. N. R. R., required by law to be in writing, and which could only legally be formed in writing, which, as shown by the petition, it was proposed to modify, add to, change, or vary by parol testimony; and that such writing being complete in itself could not be so modified, changed, varied or added to. (2) That the testimony offered as to what Judge Reagan said and what Grow said and others said was hearsay. (3) That the testimony is offered, as ap-

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pears by the pleadings and the statement now made by the plaintiffs, in support of a contract alleged to have been made in behalf of the citizens of Palestine acting by Judge Reagan upon an illegal consideration, to wit: Judge Reagan's alleged undertaking to induce and influence the voters of the county to vote a bond issue, the alleged consideration to the railroad being solely the engagement of Judge Reagan to induce and advocate such a bond issue. (4) That the evidence is offered for the purpose of showing an agreement or an alleged contract, in promotion of a County contract, and to attach to the County contract, which is in writing, an alleged promotion contract, which, if made, would be upon an illegal consideration and is prohibited by law and public policy. (5) That after the lapse of over 40 years it is not permissible to prove, in connection with a written contract with the County and the public, what were the inducements or considerations or representations outside of the written contract there were upon which it was made, nor can a written contract adopted by the voters be so modified. (6) That it appears from the pleadings, and tender of the testimony, that it is now proposed to show that Judge Reagan's services were hired to induce and influence the voters of Anderson County to vote a bond issue, on inducements outside of the writings, that the shops and general offices were to be erected in Palestine for the benefit of the people of Palestine, as contradistinguished from the people of the County, and that it would have been illegal to arrange to bestow such benefits upon the people of part of the county as contradistinguished from the people of all of the county. (7) That the proposed agreement, as plead and as proposed to be testified to in parol, if legal and probable under the law, which is denied, would have to be in writing, and comes within the terms of the statute of frauds, which is now invoked; and therefore it is not provable in parol. (8) That after the lapse of over 40 years and after rights had been acquired and acted upon by various parties,

on the basis of the written contract and agreement already introduced, it is not permissible to prove by parol the alleged contract. (8a) That a record of the transaction with the County introduced by plaintiffs, showed the judgment of the County Court settling the whole matter and the considerations for the contract, adjudged to have been performed by the railroad, whereby the matter was *res adjudicata*, and the parties estopped. (9) That there is no evidence that Grow had any authority to make any agreement, such as is proposed to be shown by parol, because the law lodged the authority to make any such agreement, if it could be made at all, wholly with the board of directors, and, furthermore, that there is no evidence whatsoever of the ratification of such an agreement, which ratification could only be by the board of directors. (10) That the testimony would be immaterial and irrelevant. (11) It appears by the decree of foreclosure of the sold out International & Great Northern Railroad Company in May, 1910, and introduced by the plaintiffs, that all of the issues involved in said proposed testimony were settled, and if not settled were reserved exclusively for the United States Court. (12) The plaintiffs rely upon the act of the Legislature of Texas of 1889, carried into articles 6423-4-5 of the present Revised Statutes of Texas, and are now claiming that by such act, long subsequent to the alleged contract which they plead in this case, a lien, burden, or servitude were fixed upon the property or properties, or some of them, of the sold out I. & G. N. R. R., which have been acquired by this defendant; without which lien or burden they can not recover; and in that by this statute and its terms they are extending and attempting to burden and add to the alleged contracts in its extensions and purported obligations, by going beyond the alleged contracts, whereby it appears, when applied to the facts of this case, that such act of 1889, as so construed, is unconstitutional and void and violates sub-section one of section X of article one of the Constitution of the United States, pro-

hibiting any State from passing a law impairing the obligation of contracts. The plaintiffs claiming that their alleged personal contract so became secured first in 1889, and that in 1889 the statute placed other obligations on the alleged contracts, and not included in the contracts. (13) Because said act of the legislature of 1889 violates sub-section one of section X of article one of the Constitution of the United States and impairs the obligation of contracts when, as construed by the plaintiffs and plead by them; without which construction and application they can not recover; in that it appears, from the decree of foreclosure and evidence introduced by them, that the I. & G. N. R. R. was sold out under a mortgage termed the second mortgage, issued in 1881; that the defendant is the assignee and holder as purchaser of all the rights whatsoever accruing to the mortgagees; and further, as to any obligations, claimed by the plaintiffs to have been imposed by the act of 1889 (all of which were additions to and burdens upon the alleged contract asserted by plaintiffs) they are, in violation of said mortgage, attempting to make prior in law rights which were junior in time, if any such rights existed, all of which is in violation of the Constitution of the United States, here and now invoked. (14) It appears that the plaintiffs rely upon said State act of 1889, as construed by them, which act is in violation, when so construed, of section one of article XIV of the Amendments to the Constitution of the United States, commonly called the XIV Amendment; in that such statute imposes great penalties; and in that the insistence that the statute is applicable to the defendant, constitutes an attempt to abridge the privileges and immunities of the defendant and to deprive it of its property without due process of law, and to deny it the equal protection of the law by penalizing or threatening to penalize it at the rate of \$5,000 a day, and further penalize it, if it should resort to the courts to resist this action and litigate its rights by refusing to obey such unconstitutional statute. (15) The plaintiffs can not



recover, as admitted by them, without the aid of said State Statute of 1889, which statute, as applied by them, is void and unconstitutional and violates section one of article 14 of the Amendments to the Constitution of the United States; in that it is an undue interference with the business and obligations of the defendant, which it owes to the public in state and interstate commerce; whereby it attempts to interfere with the lawful discretion and power of the defendant to conduct its business within the limits of the law; and whereby it attempts, by subsequent statute, to place burdens and liens and additions on and securing personal contracts as claimed by the plaintiffs, thereby denying to this defendant the equal protection of the law and taking its property without due process of law by such illegal interference. (16) That the said act of 1889 of Texas, as applied, is unconstitutional and void, and yet without it the plaintiffs can not recover; in that such act is applicable only to chartered railroads and not applicable to individuals, receivers or other persons operating as railroad carriers, or to other persons or corporations whatsoever, and so violates section one of article XIV of the Amendments to the Constitution of the United States, being legislation against a species or class, not rightly classified on any legal ground; and in that it places a burden upon the species or class not placed upon other persons and corporations classifiable with it; thereby violating the prohibition of denying to any persons "the equal protection of the laws," and abridging the privileges and immunities of the defendant and depriving it of its property without due process of law. (17) The plaintiffs rely upon the said act of 1889, which is claimed by them to secure their alleged contracts in this case, which as applied, is illegal and void and contrary to the Constitution of the State of Texas: (a) because the same assesses a penalty of an amount prohibited by the Constitution; (b) because the statute as construed and pleaded is retroactive; (c) because the plaintiffs seek to recover in violation of the ob-

ligations and terms of the alleged contracts on which they sue and in violation of the mortgage contract, of the sold out railroad, made in 1881; (d) because such statute is *ex post facto* and pronounces penalties, and therein is contrary to the Constitution of the United States, as well as that of the state; (e) because as construed by plaintiffs the statute denies to the defendant the equal protection of the law and is violative of the due process of law; (f) because such statute as construed by the plaintiffs, and without which construction they can not prevail, is an attempt to place on this defendant, never assuming the same, alleged obligations of the sold out I. & G. N. R. R. or its predecessors, and which were personal to them. (17a) Because the plaintiffs alleged and attempted to prove a contract binding "forever," the law and Constitution not permitting properties and obligations to be bound up or enforced "forever," and the alleged contracts being as claimed forever, or indeterminate, are terminable at option, if contracts at all, which is not admitted. (18) Because the plaintiffs have introduced the conveyance of the properties of the sold out railroad to this defendant, and also its charter and the decree of foreclosure under which the properties were sold, from which it appears that the defendant bought free of all the obligations now asserted by the plaintiffs. (19) Because plaintiffs have introduced the charter of the defendant, from which it appears the general offices are located at Houston, Texas, and the charter being legally issued, the defendant is bound to maintain its general offices at Houston, Texas. (20) Because it also appears that the H. & G. N. R. R.'s charter, introduced by the plaintiffs, required said offices to be at Houston, Texas, and the charter of the International, introduced by plaintiffs, not designating a definite place for the offices, and the two roads consolidated under act of 1889, the offices are obligated to be kept at Houston, Texas.

And these objections being considered by the Court were, by the Court, overruled; and then and there in open

court the defendant excepted to such ruling and took its bill of exception No. 12, and over these objections, Wright testified as follows:

Mr. Grow said to Judge Reagan that he had come to make some definite contract or arrangement with reference to bringing the Great Northern Railroad from its present terminus to Palestine to connect with the International Railroad, and the permanent location of its shops, round houses and general offices. Judge Reagan asked Mr. Grow about what would be expected of the citizens of Palestine to do, and Mr. Grow said he would expect them to give bonds in the sum of \$200,000. Judge Reagan said he had been talking with some of the citizens and \$100,000 was all they would be able to donate. "Q. Well, just go ahead now, Mr. Wright. From whom did Mr. Grow state or from whom were Mr. Grow and Judge Reagan discussing the bond issue from; that is, from whom was it to be voted? A. Palestine and Anderson County. Q. Who was to issue the bonds? A. The County of Anderson. Q. What amount did Judge Reagan suggest, if any? A. He told Mr. Grow he thought \$100,000 would be the largest amount they could get up."

Here an objection was made by the defendant that the witness should not be asked particular questions, but should be told to go ahead and tell all that occurred, and that no suggestions or leading questions should be put to him. Plaintiffs' counsel stated that he would avoid doing so, as much as possible, and then asked the witness to go ahead and state the discussion there between Judge Reagan and Mr. Grow with reference to the amount of the bond issue, and what Mr. Grow said. The witness answered that Mr. Grow said that he did not think \$100,000 was sufficient, "that inasmuch as they would locate their machine shops, general offices and round houses there forever, that long after they had paid the bond issue that they would be paying into the Treasury more than the \$200,000 paid by the County; Judge Reagan said that the people had just emerged from the war and were not

able to vote a bond issue of \$200,000; that they were already burdened with taxes, and it seemed like they were going to disagree there." Q. "State what was the result of that discussion there?" A. "I stated that it seemed that they were not going to agree on the amount, and at that time Mr. Noble, who was present, and the chief engineer, suggested to me that we might get a compromise. He suggested to me—he was talking to me about it while Judge Reagan and Mr. Grow were discussing it—and he suggested to me about a compromise of One Hundred and Fifty Thousand Dollars; if I didn't think so. I suggested the amount to Judge Reagan, and he suggested the amount to Mr. Grow, and Mr. Grow finally agreed with him, but Judge Reagan did not at that time; he said he couldn't make the agreement for one hundred and fifty thousand dollars until he saw some more of the citizens of Palestine, and that he would have to see them before he could make the agreement." Q. "What, if anything, was said in that conversation with reference to any canvass of the county in behalf of the bond issue?" A. "Well, Mr. Grow said in the outset that he would expect Judge Reagan to make a canvass of the county, and gave the reason that it could not be carried unless Judge Reagan would make a personal canvass of the county."

Being asked as to the stage of the negotiations at the close of the conference that night, the witness answered: "Judge Reagan told them he would let them know the next morning early; that he would see the other citizens he desired to see, and let them know at that time. The proposition before Judge Reagan at that time was \$1 0,000 and him to make a canvass of the county." Q. "Was there anything else the Houston & Great Northern was to get?" A. "No, sir." Q. "What were the citizens of Palestine and Anderson County to receive, if anything, from the Railroad Company?"

Defendant: We object to that; it is leading.

Q. "I will change it. What, if anything, was offered by Mr. Grow as the matter finally stood?"

Defendant: We object to that as leading; it assumes that something was passed around.

The Court: The objection is overruled.

Defendant: We except.

"Q. Just answer the question, Mr. Wright? A. Well, the first proposition was they were to bring the railroad to connect with the International Railroad and to permanently locate their shops, round houses and general offices. Q. Where? A. Palestine, Texas. Q. Now, I believe you had already stated that Judge Reagan promised to give them an answer the next morning? A. Yes, sir; the answer was to be given at my livery stable. Q. State now, of your own personal knowledge, if they met there the next morning, and just what took place between them? A. Well, I think, about seven o'clock in the morning Judge Reagan told them that he had seen the citizens of Palestine that he wanted to see, and that they would accept this proposition; they would accept the proposition. Q. What proposition? A. The One Hundred and Fifty Thousand Dollars in bonds and Judge Reagan to canvass the county. Q. What, if anything, was said at your stable that morning with reference and in regard to a canvass of the county? A. Judge Reagan agreed to canvass the county at their request, and he said he would go at it immediately; which he did."

The witness stated that he then took Mr. Grow and Mr. Noble in a hack down towards the terminus of the railroad; that is, of the H. & G. N., then building north, only a part of the way, meeting another party, who had come to meet them; and when he met such party he, the witness, came back to Palestine, having turned Messrs. Grow and Noble over to such other party.

The witness was next asked to state whether or not Judge Reagan made a canvass of the county in support of the bond issue. All of this matter was objected to, and included in Bill of Exceptions No. 12, being the last bill mentioned above, but an additional objection was made that such matter was hearsay; to which objection

the plaintiffs replied that they did not propose to show any declarations made by Judge Reagan, but that he made a canvass for the bond issue; whereupon the court overruled the objection, and the defendants excepted and took their Bill of Exceptions No. 13, and over the objection, the witness testified that he was with Judge Reagan at several of his appointments; that Judge Reagan did make a canvass of the county in support of the bond issue; that he heard him make speeches at Elkhart, in the southeastern part of Anderson County, and at Washington Mills, ten or eleven miles from Palestine towards the southeast, and at Ezell-Suggs and Posey's Mills, which is located almost due east from Palestine about twelve miles; at Kickapoo, in the northeastern part of the county, and at Fosterville, and he afterwards heard him speak at Palestine. At Palestine, Judge Reagan introduced Mr. Grow, when the latter spoke, and he made a speech at the Court House before Mr. Grow came. In introducing Mr. Grow at the Court House, Judge Reagan made a little speech of introduction. This, the witness thought, was about two days before the election, which was on the three first days of May, all the voters coming to Palestine and voting there, as shown by the record.

The plaintiffs then said that they now proposed to show by Wright what Grow said in that speech, whereupon the defendant objected to any attempt to prove such speech of Grow's and opposed thereto all of its objections set out in Bill of Exceptions 12, above, which were then referred to, and stated to the court and further objected: (1) that a contract agreement can not be made by campaign speeches; that campaign and electioneering promises and statements were inadmissible in order to show what the contract was, or to add to, modify, or change the same. (2) That the testimony was hearsay. (3) That it is not introducable after this immense lapse of time. (4) That if admitted in evidence, it is a statement which would not bind the defendant, which had purchased the property under foreclosure mortgage of 1881, as shown

by the evidence. (5) That it was not shown that Grow had any authority to make such contract or agreement, if any there was. (6) That the admissions of Grow, if any, as an agent were not now provable.

Plaintiffs' counsel then stated to the court that the testimony was offered for the purpose of showing the statements and declarations then made by Grow, only with reference to the contract alleged to have been made between him and Reagan, and the court then overruled all of the defendant's objections; whereupon the defendant excepted to the ruling of the court, and thereupon, at the request of the plaintiffs' counsel, the court stated to the jury that the testimony with regard to what Grow may have said in a speech in front of the Court House in Palestine, about two days before the election, was only admitted to be considered by the jury in determining whether there was a contract between the citizens of Palestine and the railroad company, as alleged by plaintiffs, and not with Anderson County, and that they should not consider it for any other purpose. Whereupon the defendant renewed each and all of their objections, which the court again overruled, and the defendant excepted and took its Bill No. 14, and over these objections and exceptions the witness testified that Mrs. Reagan, as well as Noble, were present at Judge Reagan's house on the occasion he had testified to. It was then understood that the road was to be built into Palestine within a year, and that Grow made his speech on the occasion inquired about in front of the Court House, and said: "I am Galusha A. Grow, and I am President of the Great Northern Railroad Company, and I understand that there are some persons who doubt the authority that I have given Judge Reagan to state before the voters, upon the proposition of the issuance of the bonds or the voting of the bonds, and I want to tell you myself just what we propose to do and what we agreed with Judge Reagan we would do." "And then he went on to say that they would bring the road there, the shops, general offices, round houses and



general shops there, and went on to state the great benefit to be derived by bringing them there."

"Q. Just name some of the benefits he stated would come to Palestine and Anderson County from the shops and offices? A. I remember very distinctly that he said that within five years it would increase the population five thousand at least; he stated they would bring mechanics there and some skilled men, and it would make a market there for everything we had to sell; for none of his men would be producers, but all would be consumers, and that all produce and things we had to sell would find a ready market there. Q. What, if anything, was said in that speech of Mr. Grow with reference to the time of the location and maintenance of those shops and offices at Palestine? A. He stated they would have them within a year. Q. And how long after being put there did he say they would remain there, if anything? A. He said they would be continued to remain there all of the time."

"He said the railroad company itself would pay most of the taxes, because it would increase the value of property there, and that they would enlarge their shops from year to year, and that their force would be increased from time to time, and that every year they would be paying more taxes, and also that long after the bonds had been paid they would be paying into the treasury more than the amount of the bonds themselves, and that the road was to be completed during that year. It is a matter of fact that during the fall of that year they commenced to run cars into Palestine."

This is the only time witness said he ever heard Mr. Grow make a speech. There was a large audience to which he spoke. Judge Reagan, in his speeches, had large crowds at some places. At Kickapoo and Foster-ville he had large crowds, and he had a joint debate at the latter place with a justice of the peace. The witness testified that the next time he saw Mr. Grow he thought it was in July, but he knew it was when he came to see about getting the bonds issued, and that it was at the

time when the County Court ordered the bonds issued. Witness was boarding at the Hunter Hotel, and Mr. Grow stopped there. Witness said that Mr. Grow asked him to go with him over to the County Court, as he was about the only one there whom Mr. Grow knew, and that he thinks it was about ten o'clock when Mr. Grow came to his stable, and he went with him over to the Commissioners' Court, and thinks that he introduced him to members of the Court. His stable was about 100 yards from the Court House. The witness was next asked to state what took place between Grow and the Court, and what Grow told the Court, when he presented the paper to the Court, being Grow's application for the bonds, already in evidence as a part of the record of the bond issue, introduced by the plaintiffs. To all of which the defendant objected, opposing all their objections contained in Bill of Exceptions No. 12, and also the additional objection that the obligations between the County and the railroad company were already fixed, the election having been held and the railroad having built in, and were not subject to modification, and that there would be no considerations either way for any additional contracts for these bonds, and further objected that the record introduced by the plaintiffs showed the judgment of the County Court declaring that the railroad had already performed its obligations, and that such judgment could not now be impeached; which objections, as well as all of the other objections set out in Bill of Exception No. 12, and again stated to the court, were by the court overruled, and the objections were applied to all of the plaintiffs' testimony as to what occurred or was said before the County Court by anyone in this action, and being so stated, understood and agreed to, the court overruled the same, and the defendant then excepted and took this its Bill No. 15, and over the same and over these objections, the witness testified. "The court was composed of one Democrat, and I believe all the rest Republicans; I guess, Republicans; we called them 'Scalliwags.' "

Shattuck, a member of the court, objected to giving Grow just what he wanted, saying that he had not complied with his contract, in reply to which, as well as the witness said he could remember, Mr. Grow had immediately responded by telling Shattuck and the court that he did not want to encumber the bonds, with all of the unnecessary process or whatever it might have been. "I don't remember the exact language he used now." "He said it was a fact that he had promised to do these things, and that he expected to comply with them, and I think he said he had already ordered the shops to be built, and that they would be at work pretty soon, and he very soon convinced the balance of the court, but never did convince Shattuck, but finally they gave him the order he asked." Being asked to repeat what Mr. Grow said to the court, the witness replied that "he said he did not want the bonds encumbered with anything unnecessary; that he had made a contract and did not deny it; that he had agreed to locate the shops, round houses and general offices at Palestine permanently, and that he did not see any sense in putting anything in the bonds which might encumber them, and further, that it might have an adverse effect on his ability to sell the bonds, and that such matters as that might so encumber the bonds that he would have a hard time to dispose of them. That is about the language he used, but, of course, not his exact language. I have stated the general substance of what he said."

Witness stated that Grow and Judge Reagan met at the latter's house between March 15th and 20th, on the occasion to which he had testified, and that, within a few days Judge Reagan commenced to canvass the county for the bond issue, and must have been out for a week or two, at least, in the canvass. The election commenced on the first day of May, and the Reagan speech was made at the Court House a week or ten days before the election. The H. & G. N. entered Palestine from the south, over the right-of-way of the International. The witness thinks it

connected with the International track at the International Depot in Palestine.

The plaintiffs then said that they proposed to prove the descriptions of properties, their sites, acreage, etc., in Palestine, for the purpose of showing that their alleged contracts were performed, and to show ratification; whereupon the defendants objected: (1) That the matters proposed to be shown were subsequent to the transactions attempted to be proved, and therefore could have no tendency to prove them; and were immaterial and irrelevant; (2) they opposed all of the objections heretofore stated by them in their Bill of Exceptions No. 12, now again stated to the court, which objections being overruled by the court, the defendant excepted and took its Bill of Exceptions No. 16, and over the objections the witness testified, as follows: He thought that the general offices, buildings, shops and grounds in the city of Palestine covered about 70 acres; that, as he now remembers, the machine shops and roundhouses were the first improvements made by the H. & G. N., and they were made in 1873; first, the blacksmith shop, then the round houses; but he did not think there were any general offices between 1872 and 1875. The witness was asked to state what additions had been made to the shops from time to time, to which the defendant opposed its objections contained in its last Bill of Exceptions No. 16, and the further objection, that additions to the shops had nothing to do with this contract and did not come within them, and had no tendency to prove the existence of the alleged contracts; which objections were overruled, and the defendant took his Bill of Exceptions No. 17, and over the same the witness testified that the shops had continually grown from year to year all along, until now they covered ten or fifteen acres in Palestine, of which he thought 7 or 8 acres were under roof; that the roundhouse is fixed to accommodate 40 or 50 engines at one time, and is assumed by the witness to now cover one

and a half acres, at least; that the coach shops, where the car department is, he assumes, would cover 2 or 3 acres, and the general blacksmith shops now cover a good deal of ground, and the paint shop now covers a good deal, and there is now a large brick store house covering a good deal of ground, and the master car shop which will cover a good deal of ground, and all those things of that sort. In addition there is now a good large building for boiler shops, then a lot of the work is done out in the open; by "the open," the witness said he meant mostly under shed, under the present law. Most of the buildings are built of brick and mortar, with metal or slate roofing, and all are first-class buildings.

The witness was asked whether or not he knew Mr. H. M. Hoxie, and stated he did know him before the I. & G. N. got to Palestine, at Hearne, and altogether he supposed about 20 years, and was as well acquainted with him as one ever gets to be with a railroad man.

The witness said he had been in the mercantile and real estate businesses; that he built the Court House of Anderson County, previous to the one now under construction, and the High School building, and that he was the principal owner and general manager of the oil mill at Palestine, and had been President of the First National Bank to be established at Palestine.

In 1875 Hoxie was Superintendent, the witness thinks, and acted as General Manager of the I. & G. N. Railroad, "he was or done everything," and in that year, 1875, he had a transaction with Hoxie, together with some other citizens of Palestine, relative to the general offices of the I. & G. N. R. R. Co. The witness was then requested to state what took place in that transaction, to state all of it, and who were present, and what was said and done, and to describe it; whereupon, the defendant objected (1) it stated all of the objections contained in its Bill of Exceptions No. 12, above, and recited each of them carefully to the court; (2) that the plaintiffs now state that Cap-

tain R. S. Hayes, then the General Manager or superior of Mr. Hoxie, of the I. & G. N. R. R., was proposed to be brought into the transaction; that this testimony, obviously, will relate to the "Rent-House" alleged contract set forth in plaintiff's petition, wherein Captain Hayes is not mentioned, and that no transaction can be based upon him, it being plead that the transaction was made with Hoxie, not with Hayes; (3) that the bonds issued by the county had been already delivered, and it was a closed transaction, and that, therefore, there could be no consideration for this alleged "Rent-House" transaction; (4) that the alleged "Rent-House" transaction was a transaction which, if it constituted a contract, which is not admitted, was required by the statute of frauds to be in writing, and cannot, therefore be proved in parol; (5) that, as alleged, no contract is stated; (6) that, as alleged, and within the terms of the allegation, there was shown no consideration to the Railroad for any contract; (7) that, as alleged, the contract was indefinite as to time, if it was a contract, which is not admitted, and therefore was, at the option of either party, to discontinue the performance, and was not further enforceable; (8) that an alleged contract binding "forever" was plead, and that no such agreement, if made, could be a contract, as no such contract could be "forever"; and all of these objections were by the court overruled, and to the ruling of the court the defendant excepted and took its Bill of Exceptions No. 18, and over such exceptions the witness testified as follows:

That J. W. Ozment told witness he had a telegram from Mr. Hoxie; that Mr. Hoxie was coming to Palestine, and to meet him in his private car at Magnolia Street crossing in Palestine, and that this was in the early part of 1875, and it must have been about May, "I guess." Ozment and several other citizens, with witness, he said, met Hoxie and found Captain Hayes with him, who, he thinks, was then still Engineer and Vice-President of the I. & G. N.

R. R. Co. At this point the witness stated that Mr. Hoxie told Mr. Ozment that he had received a letter from Mr. Galusha A. Grow, insisting on his complying with the contract he had made with Judge Reagan, to which the defendants made all of the objections contained in its Bill of Exceptions No. 12, above, reciting each of them to the Court; and also objected that the witness' statement of what Hoxie said or read from a letter would be hearsay, and also that Grow was then outside of the company, and had severed his connection with the Company; and that no ex parte statement from him could bind the company, nor could any admissions made by him at that time (he, at most, merely having been an agent); and that an agent's admissions were not, under these circumstances, receivable in evidence. Also any testimony as to this letter as a part of Wright's testimony was covered by Bill of Exceptions No. 18, already taken in relation to the objections in that bill, stated above; and that the defendant, on the objections now made, separately invoked the ruling of the court. These objections being made, plaintiff's counsel stated that notice had been given to the defendant to produce the original letter here, and defendant's counsel stated that search had been made and that if there was ever such a letter it could not be found. The notice was given about ten days before the trial. The Court then overruled all of the objections, whereupon the defendant excepted and took this its Bill of Exceptions No. 18-A, and over the objections the witness further testified that Mr. Hayes was then present, and that Mr. Hoxie said he had a letter from Mr. Galusha A. Grow, in which Mr. Grow said he had agreed with Judge Reagan to locate the general offices at Palestine, as well as the shops and roundhouses, and that he wanted it to be done, and that Mr. Hoxie said: "We want to come right now," or something like that, but, he said, "we want to know if you have any houses for our men that they could rent, or could you build such houses as are nec-



essary, and how long will it take you to do so if we come right away, as we want to come now." All this was said by Mr. Hoxie. "Q. What response was made to that inquiry as to whether or not houses could be built and completed right away if they would come? A. Well, Mr. J. W. Ozment was Secretary and General Manager of the Palestine Land & Building Company." That company was owned by different stockholders there in Palestine, and there may have been ten or twenty interested in it right there in town, I know there was some considerable number. I think I was a stockholder of it at the time. J. W. Ozment was President. Q. Go ahead, now, and state what response was made. A. Well, we told them that we could build the houses, any amount they wanted. Q. Who made that statement to him? A. Mr. Ozment made that statement to Mr. Hoxie. Q. Go ahead and state what was stated there. A. Well, Mr. Ozment wanted to know how many houses they wanted, and they began to sum up, and first they wanted one for themselves—good house for themselves—one for Mr. Evans and one for Mr. McCoy. Mr. McCoy was General Freight and Passenger Agent. Well, they summed it up, and stated about the houses as I have said, that they wanted all of those to be good houses for the heads of the departments, and the other houses need not be so expensive, and wanted the houses from three to five rooms, and all, of course, comfortable homes. I do not remember whether or not the number of the houses was stated there, but I do not think Mr. Hoxie indicated the number, just wanted whatever they required. I think he said he would have about 35 or 40 men, but the best things he wanted for the general officers and the heads of departments. Q. Well, now, what, if anything, was said further about going ahead and building those houses? A. Mr. Ozment told him he could commence building them right away, and something come up between them about the kind of houses and who would furnish them, and he said he would get the plans

and specifications such as they wanted, and Mr. Hoxie turned and asked Mr. Hayes how long it would take him to furnish them. Q. He had been engineer? A. Yes, sir, and maybe was chief engineer then. He said he could furnish the plans and specifications for those houses right away, and within a few days furnish the balance, but stated the house didn't need any plans or specifications, or that they would not need any for their house, and for them to just go ahead and build the houses for them." All this was in the daytime.

The witness was requested to state what was done by the citizens present in the private car with reference to meeting Mr. Hoxie's requirements. It was objected that there was nobody in the private car except a few men who belonged to the corporation building the houses, to wit, The Palestine Land & Building Company. Plaintiffs stated that they meant those present in the car at the time. The objection was overruled, and the witness answered: "Well, we agreed to build the houses for them." It was then objected that it had never been shown who were present in the car, of the citizens of Palestine, except Ozment and Wright, representing a private corporation, the Palestine Land & Building Company, which Wright's testimony indicated that Hoxie was dealing with, and that nobody represented the citizens of Palestine generally. These objections were overruled and exceptions taken, and the witness was asked the question, "What was done by anybody following that interview, just tell who did it, and what was done? A. The Palestine Land & Building Company, I think, built McCoy's house on Magnolia Street, on property now owned by Dr. Link, or where the Bennett boarding house is now." The witness was then asked to state what kind of house was built for McCoy by the citizens of Palestine, which was objected to by the defendant, and the witness stated that the Palestine Land & Building Company was the only concern, he thought, of that character at that time in Palestine. That the

house was built by the Palestine Land & Building Co. to suit McCoy's views. Here, with the permission of the plaintiffs, the defendant asked the witness to state who prepared the plans and specifications for the McCoy house, and he said that a Mr. Ligon did, that McCoy let Mr. Ligon have the contract. That Ligon was a builder employed by the Palestine Land & Building Company, and that McCoy supervised the building. The plaintiffs then continued. The Palestine Land & Building Company also built the house on a lot formerly owned by Judge Reeves, now covered by the Methodist Parsonage; they did not build it outright, they repaired it, at a cost of about \$1500.00, and also that the same company built a good house on the lot where Mrs. Young lives now, of five or six rooms, and built 3 houses on May Street. He thinks, but does not remember, that they built any others. He thinks Mr. Ozment built two houses over in Old Town, and Whitesell and himself built two on May and Dallas Streets, but they built them for the Palestine Land & Building Company, for whom they were buying the lots and improving them; that they improved the lots because the general offices and shops were coming to Palestine to be located, and they would not all or any one of them have built them if they had not had that agreement with Hoxie. That these houses which he and Whitesell built cost \$2800 to \$3000, he thinks, and that the Palestine Land & Building Company also built a house where Mrs. Young's property now is, costing about \$2500, and that the houses which that Company built on May Street cost, he should judge, about \$1200 to \$1500 apiece; that all the houses that were asked for by the I. & G. N. R. R. Co., or any of its employees, were built; that in the interview with Hoxie, Ozment told him that he would want to get about 10% on the investment in the houses, and that he thinks Hoxie or Hayes, one of them, said that would be about half as much as they were paying in Houston. McCoy occupied the McCoy house for several years. One

of the houses which he and Whitesell built was occupied by Herrick, who, he thinks, was stenographer for McCoy, and some of them were occupied by clerks and their wives in the general offices; that he never heard any objections to the houses that were built, and that the relations between the railroad company and the people of Palestine were absolutely friendly, as far as he knew.

In this connection the plaintiffs introduced a map of the City of Palestine, on which the witness pointed out that the residences which he had testified were built by the Palestine Land & Building Co., were located one on Lot 15 of Larkin & Campbell's Addition to Palestine, one on Lot 14 of Larkin & Campbell's Addition to Palestine, one on the west half of Lot 13 of Larkin & Campbell's Addition to Palestine, three on Lot 4 of Larkin & Campbell's Addition to Palestine, and that the residences built by J. W. Ozment were one on part of Block 80 of said City, and one on Lot 2 in Block 11 of said City, and that the two residences built by Wright & Whitesell were on Lot 5 of Larkin & Campbell's Addition to Palestine.

The witness says that one house was to be built for Hoxie and Hayes, as they were going to occupy the same house. Hayes was single and Hoxie was married. There was to be a separate house for Evans, but after they got through talking on the car, Ozment showed Hayes and Hoxie some land belonging to the Railroad Co., or to the Texas Land Company, allied to the Railroad Company, and they were later advised that Mrs. Hoxie had some money, and so they put up their own house, and Evans put up a house for himself, because he wanted to do it. Before the conversation with Hoxie, the general offices were located in Houston, Texas, and in about four months thereafter, the witness thinks, the general offices moved with their clerks to Palestine. "Q. And when were those houses commenced to be occupied by employes and officers of that Company? A. Just about as fast as we would get them completed they would put men in them."

The first general office building at Palestine was of wood, was about 100 feet long and 20 feet wide, with a shed on one side, on the railroad reservation, and the witness thinks that about 2 or 3 years after that, Captain Hayes built the brick building now standing, in about 1878. It is a 3-story brick, with slate roof, about 125 feet long and 40 feet wide, divided into apartments for the different railroad departments of the general offices, costing, the witness judges, about \$25,000 or \$30,000. In 1872 the H. & G. N. had shops at Houston, and the International had its shops at Hearne, and also its roundhouses which they abandoned in 1873, but the witness did not know when the shops of the H. & G. N. at Houston were abandoned. From 1875 up to 1911 the annual meetings of the directors and stockholders of the I. & G. N. were, as far as he knows, at Palestine, and from 1873 the I. & G. N. shops and roundhouses have been at Palestine, on the railroad reservation. In 1881 to 1889 Maxwell was Secretary of the Company at Palestine, in the general office building, and Herring, during the same period, was there as Superintendent, and Kane as Claim Agent. The removal of the General Office in 1911 was made to Houston after the sale of the properties of the I. & G. N. R. R. Co. through the Federal Court.

CROSS-EXAMINATION of Wright by the defendant:

Judge Reagan, Mr. Grow and the witness met one time in joint conference at Judge Reagan's house, and also at witness' livery stable the next day, in the morning early, and these were the only interviews he and Mr. Grow and Judge Reagan ever had together, as far as he remembered, though there might have been another. Went out to Judge Reagan's with Mr. Grow and Mr. Noble, at night, at their request, instead of next morning, as he had expected, and stayed there maybe an hour or two, and brought them back to the hotel. Judge Reagan sent him to Tyler, and he brought Messrs. Grow and Noble to Palestine. Mr. Grow paid him, that

is his impression, about \$5.00 a day he charged. The night after the trip to Judge Reagan's he slept in his stable with the horses, he remembers that, he might have slept somewhere else as he slept around generally. He remembers that he drove mules to Tyler and a pair of horses out to Judge Reagan's that night; that he is sure of, he remembers the horses balked. He remembers when he got to Judge Reagan's he did not say "hello," but went up to the door and knocked. The witness was next asked to begin at the beginning, and without another question to state the entire interview at Judge Reagan's house between Reagan, Grow and Noble from the beginning to the end. He answered, "On the direct examination questions were asked me, and I answered the questions," but stated that he thought he could give the substance of it, but would not undertake to do it word for word, and proceeded: "Well, when we got in the house we found Judge Reagan and Mrs. Reagan at home, and after a few minutes Mr. Grow told Judge Reagan that he had come to make some definite arrangements or agreement with him to bring their road, in connection with the I. & G. N. or the International, at Palestine, and to permanently locate their offices—general offices—and machine shops and roundhouses at Palestine, and I think at that time Judge Reagan asked him what would be expected of the citizens of Palestine, and Mr. Grow replied, as well as I remember, that he would expect a donation of two hundred thousand dollars in bonds; and Judge Reagan replied that he thought that was too much; didn't think the people of Palestine and Anderson County would be able to vote so large an amount; that the people had just emerged from the war, and were still burdened with large taxes, and suggested that they would be willing to vote one hundred thousand dollars, and some further discussion ensued between the two, and it seemed like they were not going to agree, and Charles Noble suggested to me that he thought they might

agree on a compromise of one hundred and fifty thousand dollars, and I told him that he might suggest it to them, which he did; and Mr. Grow still insisted on the two hundred thousand dollars, and said that he thought that the citizens of Palestine and Anderson County could afford to give that much for the benefits they would get in locating the shops, roundhouses and general offices there permanently; but he finally agreed with Judge Reagan that he would accept the one hundred and fifty thousand dollars, provided Judge Reagan would canvass the county in the interest of the issuance of the bonds; Judge Reagan still insisted that one hundred thousand dollars would be as much as they could give, but he finally agreed that he would give them a final answer the next morning; that they would meet at my stable, and that he wanted to see some other citizens before he could make the proposed agreement for one hundred and fifty thousand dollars; the next morning, somewhere about seven o'clock, Judge Reagan came to town and down to my office, and in a few minutes afterwards Mr. Grow and Mr. Noble came down; and Judge Reagan told them that he had seen the parties that he wanted to see, and he was willing now to accept the proposition to vote one hundred and fifty thousand in bonds, and would canvass the county at their suggestion in support of the bonds, and told them he was ready to go at it at once. Q. Now, is that all of it? A. Well, they may have said some more, of course, but that was the substance of what was said in getting together on the proposition, and Judge Reagan agreeing to canvass the county. Q. And that is all there was to it? A. That is the substance of what was said between them, yes, sir; I know Judge Reagan agreed to canvass the county and use his influence to carry the election in favor of the bonds. Q. Now, is that all? A. He agreed to establish the roundhouses and general offices and machine shops there if he would canvass the county. Q. And that is all? A. Well, he went on to state the contract as he un-



derstood it, and they were to bring the office, machine shops and roundhouses there and keep them there. Q. Who stated that? A. Judge Reagan did. Q. What did he state? A. He stated that the contract was that they were to bring the road there to connect with the International and to locate the machine shops, general offices and roundhouses there, and that they would be there at all times thereafter. Q. Now, is that all? A. Well, Judge Reagan was willing to canvass the county. Q. Now, have you stated it all? A. I think about all that occurred there, yes, sir, and then Mr. Grow and Mr. Noble left."

These conversations, to which he has testified, occurred about 42 years ago, and he heard Judge Reagan mention the machine shops in that conversation, remembers that he used the expression "roundhouses," and "general offices," that the word "general" was in there; that is his recollection of it; that he knew the difference between "offices" and "general offices," for the road is operated from the general offices; that he understood them to be talking of all the officers who operated the railroad, and that they and their employes, would come to Palestine; they also said they were going to bring the road into Palestine and establish a depot. The witness did not know whether he had mentioned the part about the depot until it came up on cross-examination, did not think that he had, as his attention had not been called to it. He voted at the election; don't remember what was printed on the ballot, but thinks it was printed on it "for" or "against" the bonds; don't remember that he noticed the publication calling the election, and could not say that he did. "Q. Now, did you understand while you voted that ticket the proposition that was being submitted to the people? A. I did. Q. And you understood that you were voting on this proposition settling the question as to the I. & G. N. R. R. coming in there, and establishing all of these things there? A. I did, certainly. Q. Now, on your bal-

lot was there anything said about machine shops? A. I think not." The witness stated that he could not tell just what was on this ballot; that he supposed his ballot was "For" or "Against" the proposition; that was the natural inference. "Q. Going back again into Judge Reagan's residence at the time you were talking about these things there, now, as I understood you, you said that Mr. Grow was willing to build the road into Palestine to connect with the International Railroad there, or intersect it there, and establish the machine shops and general offices there if the County of Anderson would vote and issue to them this bond issue of \$150,000? A. No, sir, not exactly that. Q. What did he say? A. He said the City of Palestine and Anderson County."

Witness did not understand that the City of Palestine was to vote the bonds, but the city and Anderson County; that the city was part of Anderson County, and the city was then making the contract, and that Judge Reagan agreed to canvass the county in the interest of the bonds. "Q. On his own account Judge Reagan was doing that? A. I suppose so, yes, sir; he was doing it at the request of Mr. Grow. My understanding was that Judge Reagan had agreed to canvass the county in the interest of the bonds, and that they would be willing to accept the \$150,000 if he would make this canvass of the county." The witness thought that Mr. Grow was banking on Judge Reagan's influence as a citizen, and that Mr. Grow said to Judge Reagan about this: "If you will get out and canvass this county we can carry this bond issue," and that Judge Reagan told him he would do that, and that that was the contract up to that point. "There might have been some other connection, but that was the substance of the contract as I understood it." Did not understand that Palestine was to issue the bonds or a bond election was to be ordered for Palestine, it was the County of Anderson, the whole county, which included Palestine, and the whole county was to vote at the elec-

tion which the court had ordered. Witness did not think that he signed the petition for the election, but don't remember, nor whether he saw it published. Before Judge Reagan answered Mr. Grow that night as to the \$150,000 proposition, he said that he wanted to see some other friends to find out what they thought about it. Judge Reagan did not claim to be representing any corporation, but witness understood he was representing the citizens of Palestine, or the City of Palestine, and so knows, because "we had had a meeting there."

The witness said that he understood Reagan to be representing the City of Palestine; that the proposition was before all of us, and Judge Reagan was to canvass the county in the interest of it, that is, before all of the citizens of Palestine, and Judge Reagan was to canvass the county representing the citizens of Palestine; he had been so authorized at a meeting prior to that time, and it had authorized Judge Reagan to represent them. He was asked whether that was a mass meeting of the citizens of Anderson county, and he answered: "Citizens of Palestine." He did not know that the Mayor called it; did not know whether it was called by proclamation of the Mayor; he was at the meeting. Judge Reagan did not live in the City of Palestine, but had an office there; never lived in Palestine, but two miles out; did not know whether farmers were at the meeting or not, Judge Reagan was a farmer, and was there; meeting was not kept a secret from the farmers of Anderson County; could not tell whether all of the farmers who attended that meeting lived in Palestine or not; understood the meeting was called for the purpose of getting the citizens of Palestine whoever might be there interested in the matter; did not know that the farmers outside of the city were barred from the meeting, but supposed not. Witness' understanding was the meeting was called by the citizens of Palestine. Judge Reagan did what he had been authorized to do at that meeting. He (witness) did not know

that they would have put a farmer out if he had been there; supposed they would not, and he does not wish the jury to understand that a citizen living outside of Palestine would have been put out if he had come. There were plenty of farmers living in Palestine. "Q. Do I understand you to mean that only the farmers who resided in the corporation of the town would be welcomed at that meeting, and those residing over the line would not? A. I did not understand that there was any distinction between any kind of a citizen. Q. All of the citizens of Anderson County? A. My understanding was that it was called by the City of Palestine. Q. Why do you go in so close on the citizens of Palestine, as distinguished from a mass meeting of the county, when it was a county election about to be called? A. I am just telling what I remember about it. Q. Do you not understand this case now, that the issues to be submitted to the jury, that under the issues to be submitted to them that the County of Anderson has no case as a county; do you not understand in this case that the County of Anderson, as such, is precluded and settled by the vote taken and the issue and delivery of the bonds, and that if some other contract is not put in this case that the plaintiffs have no case; do you not understand this right now? A. I am not passing on the legal part of it, I don't know. Q. Have you not so heard that unless some other contract is wedged into this case, that the plaintiffs have no case, and cannot recover? A. I don't know anything about that. Q. Have you not heard from the lawyers in the case, and from your association with them in the case, that they only have two or three points to rely on, and one is the alleged Reagan contract, and one the rental contract, and the other possibly the representations of Mr. Grow to the Commissioners' Court at the time he come after the bonds? A. I understand those two propositions. Q. And you understand that if they do not recover on one of these that they cannot recover

at all; you so understand it, don't you, Mr. Wright? A. Yes, sir, that is about the way I understand it. Q. Do you not understand furthermore that the Reagan contract falls unless on the consideration that Judge Reagan was representing Palestine as distinguished from the entire county; that they have got to show that under your testimony to make a case on the Reagan contract; do you not so understand it? A. You are asking me to pass on a legal question. Q. No, I am talking about what you understand; you are an intelligent man, and I asked you if you do not understand, under the pleading of this case, that it must be shown that Judge Reagan was representing the City of Palestine as distinguished from Anderson County? A. My opinion is, that if they prove either one they are entitled to a judgment, if you want my opinion. Q. Either one of which? A. The three. Q. Now, eliminating all other issues, and getting down to the Reagan contract alone: suppose it is the only issue, and it gets down to the point of the Reagan contract alone, do you not understand the law to be that if Judge Reagan in his negotiations with Mr. Grow, must be shown to have been representing the City of Palestine, as distinguished from Anderson County, before the plaintiffs can recover? A. I am no lawyer. Q. I understand that, but I know you are an intelligent man, and do you not understand that to be the issue just there, that they must show that Judge Reagan was representing the City of Palestine as distinguished from Anderson County, in order to recover in this case? A. He could not represent Palestine without representing the citizens of the county." Witness said that he understood the petition in this case, had heard it read and understood the facts he was to testify to, and understands the facts concerning the Reagan contract, and understands that Judge Reagan was representing the citizens of Palestine. "Q. Now, let's get that question straight: Did you understand that he was representing the citizens of Palestine as distin-

guished from the citizens of the county? A. I could not say at that time that there was any special distinction made; I know he was authorized to represent them at a meeting held there in town. Q. At that time, there was no distinction made; was he the representative, then, as you understood it—now let's distinguish between the two propositions, as to whether he was representing the citizens of Palestine as such, or the entire county? A. My understanding was \* \* \* Q. I wish you would just answer the question. A. He couldn't represent the citizens of Palestine without that far affecting the citizens of the county. Q. I wish you would answer my question, Mr. Wright, as to whether or not you then understood that there was a distinction or a difference in the capacity in which he acted, which was different in the capacity in which Fletcher Saddler acted at Slocum; that is, to make it plainer, did Judge Reagan assume the role of counsel for the City of Palestine, as distinguished from the entire citizenship of the whole county; can you say which, that is, Palestine, or Anderson County? A. I understood he was representing the citizens of Palestine. Q. And you understand that there was a difference in his attitude from the other farmers in the county, do you? A. You will have to get someone to draw your distinction. Q. Did you understand he occupied a different attitude from the attitude of Mr. Saddler? A. I guess he did. Q. What was it? A. Saddler was not called on to represent anybody except himself, and Judge Reagan was called on to represent the citizens of Palestine. Q. Was he representing them specially, do you mean? A. I could not tell you that. Q. Any more than he was the rest? A. I could not tell you; of course, he was representing the citizens of Palestine more than anybody else. Q. Why? A. I told you he was directed to do so by a meeting that was held in Palestine. Q. Was anybody barred from that meeting? A. I suppose not. Q. That was a county mass meeting? A. I think it



was called in town. Q. The meeting was called in the court house? A. Yes, sir. Q. That is a county court house? A. Yes, sir. Q. That is where the usual meetings, you think, in town, were held? A. I don't know about all of them; they might be held out in the street or the court house. Q. Just because a meeting is called at the county site, you understand it to be a town meeting, is that right? A. I understood that was a town meeting." Witness said he was representing the citizens of Palestine in the transactions with Mr. Grow. He was asked whether or not when Reagan was talking to Grow at his residence, he, the witness, understood that the county as a body would forever be bound and limited to the contents of the written record. In answer he said he didn't know that he thought anything about it. "Q. Did you then understand that the citizens of Palestine, or the City of Palestine, was making a contract on the side? A. I don't know whether it was on the side or the end. Q. Did you understand that there was a secret combination in the City of Palestine and by the citizens of Palestine by means of which they intended to work Judge Reagan in front to vote this bond issue on Anderson County, and the farmers of Anderson County, for the special benefit of the town of Palestine; did you so understand it? A. We did not have to work Judge Reagan in front; he was already in front. Q. I understand that, but that was not confined to the town of Palestine? A. No, sir. Q. He was always for the greatest good for the greatest number? A. Yes, sir. Q. Did you understand, however, that there was a secret clique in the town of Palestine, and that there was on record there a secret combination against Anderson County by which they intended to work the people of the county into voting these bonds in the sum of \$150,000. A. No, sir, I don't know that; I don't know that anybody ever accused Judge Reagan of belonging to a clique. Q. I am asking you about the town clique; did you understand that the



town of Palestine as such was operating to work the bond issue off on Anderson County? A. No, sir, there was no clique. Q. And you didn't so understand? A. No, sir, everything was open and above board. Q. Did you understand that the proposition was for the benefit of every man in Anderson County equally? A. Yes, sir. Q. And everybody was interested accordingly? A. Anything that was done for the City of Palestine everybody in the county has got an interest in it. Q. After these 42 years, with your various active business engagements, are you willing to say now that Judge Reagan, in the conversation, made the narrow distinction of representing the citizens of Palestine as distinguished from Anderson County? A. As I have stated, he was there by authority of that meeting held before, which meeting vested in him authority to represent the citizens of Palestine. Q. Was that meeting not in common, and would you say that there were no citizens of Anderson County there outside of the City of Palestine? A. I don't know; there might have been. Q. Do you make the narrow distinction before this jury that 42 years afterwards he did not say that the citizens of Anderson County, as well as the citizens of Palestine, had authorized him to go forward? A. He might have said both. Q. He might have said either? A. Yes, sir. Q. As distinguished from the other? A. Yes, sir. Q. You would not say which he said, as a matter of fact? A. He was representing the county and Palestine in making that speech. Q. He was representing everybody then? A. Yes, sir. Q. He could not represent Palestine and represent everybody, could he? A. Everybody that was interested. Q. I understand you now to say you would not say whether he said that he was representing the citizens of Palestine as such, or whether he was representing Anderson County, for the common good of all; you would not say, would you? A. My best recollection is that he was representing the citizens of Palestine. Q. You

would not say which he said to Grow? A. I have told you what I remember. Q. In that conversation with Grow, coming right down to the point, now, you would not say which he said, would you, Mr. Wright? A. My understanding was, he was representing the citizens of Palestine, or the City of Palestine. Q. I am talking about what Mr. Reagan said to Mr. Grow; did he say, "Now, Mr. Grow, I am representing Anderson County, our people," or did he say, "Mr. Grow, you had better be careful, you are about to make a contract on the side, with Palestine, and I want that clearly understood"; did he say I am representing the citizenship of Anderson County, or representing the city or citizens of Palestine, or do you know? A. Might have been representing both, I couldn't tell you that, but I know he was representing the citizens of Palestine. Q. I am trying to get down to it; you don't know which he said to Mr. Grow, do you? A. I know he said Palestine—citizens of Palestine. Q. You don't know whether he happened to say Anderson County on the side or not? A. He might have. Q. I thought you said he might have said both? A. I did. Q. And he might not have said both? A. Yes, sir. Q. And you might be mistaken about which he said? A. I know he said the citizens of Palestine. Q. Did you ever make a mistake in your whole life? A. Yes, sir, every day. Q. Might that not be a mistake on your part, as to whether or not Judge Reagan said that he was representing Palestine or Anderson County; could you not be mistaken? A. I could be, yes, sir. Q. You did not write it out? A. No, sir. Q. You did not put it down? A. No, sir. Q. And you might be mistaken? A. Yes, sir, I might be, but I don't think I am. Q. You had no special reason then to think of a separate contract between the citizens of Palestine and that railroad company; such issue has arisen here now? A. No, sir."

The witness testified that he didn't know of any law or of any reason why the citizens of Palestine should be

differentiated from the county, in 1872, when the conversation took place; that the bonds were those of Anderson County, he knew that, and that the County Court ordered and declared the election and issued the bonds; that he knew there was no city election and no city bonds; but that he understood that the citizens of Palestine were making a contract for the purpose of getting those things at Palestine; that the citizens of Palestine were paying the biggest part of the taxes. "Q. That is all? A. Yes, sir. Q. Not giving anything else? A. No, sir, not specially." That no roll was called to see whether there was any farmer there at that meeting imposing himself on the town, and that it would not have been an imposition for him to have been there. He was welcome. "Q. The meeting was called for his benefit? A. Yes, sir, I guess so, just like the rest. Q. It was an Anderson County proposition? A. The bonds were to be, yes, sir. Q. They held a mass meeting there to talk about the issues for these bonds? A. Yes, sir. Q. And whenever they held a mass meeting it was done looking to the issuance of the bonds? A. Yes, sir. Q. That was all there was to it? A. No, sir. Q. What else? A. Consideration of the location of the machine shops, round-houses and general offices. Q. All the county was to do was to issue the bonds? A. Yes, sir. Q. Nobody got up in that meeting and said let's do something on the side? A. No, sir." Palestine was then a mere village of 1200 to 1500 people.

The witness was then taken up on his testimony as to what occurred when Grow applied for the bonds from the County Court, after the railroad built in, he having testified on direct examination that he went with Grow and was present, and to certain things he said occurred. On cross, he said that when Mr. Grow met the Court, to present his petition for the bonds, he did not know whether he had a lawyer with him or not from Houston, but thinks he did it himself; that he thought Mr.

Grow did about all of the talking. Mr. Grow read something, and asked the Court to issue the bonds, or something of that sort; he presented the paper and asked that it be approved, the witness thought. One of the Court objected, and gave his reasons why he would not vote for it, but the witness' recollection is that they passed the order, he does not base this opinion upon having been in this court and having heard the application and the protest and the order of the court and the whole matter read to the jury the other day. That the above is about all that occurred. Could not tell what Grow read to the Court, it was some kind of a paper, just knows he presented a paper, and he heard it read, he was not interested much; he thinks that Grow read the paper. "Q. Did he say anything to the court outside of what he read to the court? A. Why, I presume he did, I know he did not want the issuance of the bonds to be accompanied or burdened with anything outside of what was absolutely necessary; he said he had to place them on the market." Witness said that he did not know anything in particular that was in Grow's paper which he read; he was not particularly interested in it, but he heard him read it. "Q. How is it you remember those matters that were verbal and do not remember anything that is written; can you explain any difference in your recollection? A. Yes, sir. Well, this conversation I heard between Judge Reagan and Mr. Grow \* \* \*."

Q. I am talking about these matters that occurred at the Commissioners' Court; you told something you heard verbally, but you don't remember a thing that you heard in writing; you know we have a copy of his written report there in this record, don't you? A. I never saw it. Q. You understand now we have it? A. I do now, yes, sir." The witness said that Grow read some kind of a document, that he remembered things said verbally by Grow there, then he was presented with Grow's petition, and he was asked whether he heard it

read, and he said he supposed he had, he supposed that was the paper read by Mr. Grow. "Q. When you heard him read that, why did you not call his hand, or something, and say to him: 'You have not done anything of the kind'? A. I had no authority to call anybody's hand. Q. I thought you were appointed in the case? A. I did not understand I was appointed to look after that. Q. Did Shattuck call his hand? A. Yes, sir. Q. What did Shattuck say to him? A. He said he had not complied with it. Q. Tell everything that Shattuck said. A. I don't know that I could. Q. Just the very best you can. A. Said he had not complied with it; said he had not built the roundhouses and shops, and things he had promised there. Q. And what else? A. I couldn't say. Q. Roundhouses and shops and things; now what did he have to say about things? A. Whatever he had promised the people to do. Q. What did he say he had promised? Shattuck did talk to him in that way, in substance? A. Yes, sir, I think he did; I told you what I remembered he said. Q. Anyway, Shattuck called to their attention every proposition that was in the whole transaction, did he not? And call his hand on them, and said you have not done it? A. I don't think he did. Q. What did he leave out? A. I answered Mr. Greenwood that Shattuck made a protest, but I did not pay so much attention to it. Q. You have seen Shattuck's protest; or you know now in substance what it is? A. Yes, sir, in a way. Q. What did Shattuck leave out? A. My understanding is he left out the general offices. Q. But he put all the rest in? A. Yes, sir, I think so. Q. When you saw Shattuck making his protest, and leaving the general offices out, why did you not call his attention to it, and tell him he had left them out? A. I did not have any authority to do that. Q. Did you fail to do it for the want of authority? A. I don't know. Q. Why did you not send at once for Judge Reagan, and tell him right then and there that

they were about to slip one by you, that they were leaving the general offices out? A. That was none of my business. Q. Did you know he had left the general offices out then? A. No, sir. Q. Did you know what he put in there at the time? A. No, sir, I don't remember that I did, not to say remember it. Q. Well, do you remember anything about what did happen there, that is, with any degree of accuracy? A. I have told you about what I remembered, I have said that Grow come to the Court and presented some kind of a document. Q. Grow did that? A. Yes, sir, and I remember there was an objection being made to it. Q. I believe you said Saturday that Mr. Grow, when Shattuck made the howl, said: 'Just be quiet and I will put the general offices, roundhouses and machine shops here'? A. That was my understanding. Q. Then they did talk about the general offices? A. It is my impression that something was said about that, as generally whenever anybody spoke about one they generally spoke about all of them. Q. That impression of yours is mortally dim, is it not? A. It might seem so to you. Q. I am asking you from your standpoint, and not mine? A. Well, most of this I have been talking about is, of course, a little dim. Q. I meant from your viewpoint, I was not in that neighborhood then. A. I have just answered; most of it may be somewhat dim, and other things I remember distinctly. Q. All of it is more or less dim? A. Yes, sir, but some things are not very dim; if you want me, I will tell you the reason why. Q. Now, you heard the Commissioners' Court read its order (here the attorney, in connection with this question, reads the order of the Commissioners' Court attached to the Bond Record of Anderson County); now, you read or heard that order read there that I have just read over to you? A. I don't know that I did. Q. You have just heard me read this order that the court passed? A. Yes, sir. Q. Did you not hear our pleadings also, here in this case, read to the jury or the



court? A. I heard some documents read, but I never caught all of them, of course. Q. And you don't know whether you heard the court—Commissioners' Court—read its order passing these bonds or not? A. I don't remember, but I know it passed the order. Q. They overruled Shattuck in his protest? A. Yes, sir. Q. did the Commissioners' Court, then, think the railroad company had complied with its contract? A. I guess so. Q. Why did you not report to Judge Reagan that the fool Court over there was about to hand out \$150,000 and leave you high and dry on the general offices? A. I never did that. Q. Why did you not do that? A. I don't know why, I had no authority. Q. You saw they were about to do that thing, did you not? A. I don't know that I did. Q. I have understood that you said that he read this matter or document to the court, and finally convinced most of the Court, and got the order passed he was after? A. Yes, sir. Q. And you then knew that Shattuck filed or made a kick or protest? A. Yes, sir. Q. And you knew this Court overruled Shattuck's protest and let Grow have the order he was after? A. Yes, sir; after he had promised that he would do these things, and they were satisfied with it. Q. Then, they gave him the bonds if he would do these things set up in here? A. I reckon so; they seemed to be satisfied. Q. You think so? A. I don't know that that is all; it was part of what he said he would do."

There was then read to the witness the first section, numbered one, in Shattuck's protest, set out in the Transcript above, to the effect that the railroad had not established and maintained a depot as contracted for. Witness answered that he thought he, Shattuck, did read that, that he had read it himself. Then there was read to the witness the second item of Shattuck's protest, to wit, that the company had not built, or laid any foundation to build, machine shops as promised by its agents and friends, same being an inducement held out to the people



of Anderson County, and that, on account of such promise to build roundhouses and machine shops the election had been called. The witness was asked about that, but said he did not remember any particular part of Shattuck's protest, but only the whole thing in a general way. That he had heard the protest generally, but thinks that maybe Shattuck left the general offices out of his protest. Thinks Shattuck said something outside of his protest, he is sure of that. The general offices were left out of the written protest. Witness was asked why he did not go up and "nail Shattuck" right there in the Court, and say that that was not the complete contract, and he answered that he was not in the "nailing business." The third, fourth, fifth and sixth grounds as stated in Shattuck's protest were read to the witness, and he, the witness, said that his recollection was that Shattuck made his protest first verbally, and then that the writing read to him as Shattuck's protest came afterwards, but possibly that he never saw it at all, at the time Grow was before the Court. That he remembered hearing Shattuck making a verbal protest, and never heard him read it and now undertakes to say that Shattuck's protest was made verbally, and not in writing, but did not mean to say that he never saw this writing. That his interest was that of a citizen; that he was paying some attention, but not there for any particular purpose, but that when Shattuck made his protest the Court voted him right down, Shattuck being a member of it. That he remembers that something came up about a bond which the railroad was to give, and he remembers the substance of that. When asked if he understood then that the bond covered Shattuck's protest, he answered he could not remember now how he understood it then. "Q. You heard the order of the Court made requiring the bond? A. Well, I suppose I did; I heard everything that occurred there, but I only remember the substance of it." The witness was then asked to state the substance of the order of

the Court made in 1873, when the order was given for the issue of the County Bonds, requiring the railroad company to give a bond, and answered, "I couldn't tell you." Witness said he did not recollect whether that order was made to cover Shattuck's protest or not, but said he was there during the proceedings. That Grow said that to put matters about machine shops and general offices in the face of the bonds would encumber them in a way he did not think necessary. "Q. Anderson County bonds, he was talking about? A. Yes, sir. Q. You say you suppose it was all put together? A. Yes, sir. Q. Now, you don't say that this protest was all together, but in the meeting at the Court, you say it was all together? A. What they were to do was talked there and it was all together, and I understood the entire matter was discussed. Q. And your understanding was that Mr. Grow gave this bond to do and perform the things which had not been done or performed? A. I don't remember what my understanding was about it. I don't know that I had any understanding. Q. If you did, you do not now remember it? A. No, sir." Then there was read to the witness the entire order of the Commissioners' Court directing the issue of the county bonds and set out above.

There was now read to the witness the order of the County Court of Anderson County, in January, 1873, with reference to the bond to be made by the Houston & Great Northern Railroad Company, which order was as follows, now introduced in evidence:

#### COUNTY COURT ORDER.

January, 1873.

In regard to issuing County Bonds to the Houston and Great N. R. R. Company.

It is ordered by the Court that before the Bonds heretofore ordered to be issued to the Houston and Great Northern Rail Road Company, with *the* coupons thereto

attached, be signed by the Presiding Justice and the Clerk of this Court, the President of said Houston and Great Northern Rail Road Company be required to enter into his bond with the Seal of said Company attached thereto for the faithful maintenance of the Depot of said Road within one-half mile of the court house of Palestine, which shall be approved by the Presiding Justice, in the sum of three hundred thousand dollars.

The State of Texas,  
County of Anderson.

I, C. O. Miller, Clerk County Court in and for said County and State, do hereby certify that the above and foregoing is a true and correct copy of an order passed by the County Court of said County as the same appears of record, Vol. 10, page 311, Minutes County Court Anderson County, Texas.

(SEAL)

C. O. MILLER,  
*Clerk County Court Anderson Co., Texas.*  
Per Sallye Wolfe, Deputy.

The witness said that he understood that the bond was made. He was asked then why he did not get up there and then representing himself as one of the citizens of Palestine, and have the machine shops and general offices secured in that bond. He answered: "I was not there for that business; I was not an expert, and was not employed as counsel to look after those things."

It was agreed that the execution of the bond was authorized by the R'y Co. The bond was introduced by defendant, and was as follows:

The State of Texas,  
County of Anderson.

KNOW ALL MEN BY THESE PRESENTS, that the Houston and Great Northern Railroad Company, a corporation under the laws and by the authority of the State of Texas, is held and firmly bound unto the County

of Anderson in the State of Texas, in the sum of three hundred thousand (\$300,000) dollars lawful money of the United States, to be paid to the said County of Anderson, for the payment of which, well and truly to be made, the said Houston and Great Northern Railroad Company bind themselves and their successors firmly by these presents, sealed with their corporate seal, and signed and dated this twentieth day of February, A. D. Eighteen Hundred and seventy-three (1873).

The conditions of the above bond are such that, whereas, pursuant to a contract between the said Houston and Great Northern Railroad Company and the County of Anderson, in the State of Texas, entered into by them, the said County of Anderson and the Houston and Great Northern Railroad Company, and ratified at a regular election of the people of said County on the 1st, 2nd, 3rd and 4th days of May, A. D. 1872, the said County donated to the said Houston and Great Northern Railroad Company the sum of one hundred and fifty thousand (\$150,000) dollars, in the bonds of said County—said bonds to bear interest at the rate of eight (8) per cent. per annum, and to be payable in twenty (20) years, in United States currency, the interest on which bonds and two per cent. of the principal to be paid annually on the first day of January in each year, and the first payment to be made on the first day of January, A. D. 1874.

On condition that the said Houston and Great Northern Railroad Company would build their said Houston and Great Northern Railroad of the same style and class of the portion of said road then built, from the north boundary of Houston County, Texas, to its intersection with the International Railroad at the town of Palestine, Anderson County, and build and maintain a depot of said road within one-half mile of the Court House then erected in said town of Palestine, and to commence to run their cars regularly thereto by or before the first day of July, A. D. 1873, and whereas, said Company did build said

Railroad and establish a depot prior to the 31st day of December, A. D. 1872, in accordance with said contract, and whereas, pursuant to the contract of said Anderson County, the Police Court of said County, at the January term thereof, A. D. 1873, imposed an advalorem tax of one per cent. per annum, by an order of said Court, to pay off the principal and interest of said bonds, and ordered the said bonds to be executed, signed and delivered by the Presiding Justice of said County, and attested by the County Clerk thereof, to the said Houston and Great Northern Railroad Company upon the condition that said Railroad Company enter into bond with the said County of Anderson in the sum of Three Hundred Thousand (\$300,000) Dollars, for the faithful maintenance by said Railroad Company of said depot within one-half mile of the Court House aforesaid at the town of Palestine in said County of Anderson. Now (in case said County of Anderson shall pay said bonds as therein provided) the said Railroad Company shall forever faithfully and truly maintain a Railroad depot within one-half mile of the said Court House in the town of Palestine in the County of Anderson aforesaid, then the above bond to be null and void. Otherwise to be and remain in full force, virtue and effect.

GALUSHA A. GROW,  
*President The Houston & Great  
Northern Railroad Company.*

ATTEST:

ROBT. AVERY,  
*Secretary.*

The witness acknowledged that the order of the County Court did not provide for the securing of the machine shops and general offices by the bond, and said that he did not interfere when the County Court made that order, because he had not been delegated for that purpose; that he had gone down to the court with Mr. Grow and did not think it was any of his business to send for Judge

Reagan. The bond secured the depot. He knew that the machine shops were of a great deal more importance than the depot. They never did put up any depot. They occupied the International depot. Witness does not know when the bond was filed and could not tell whether the bond was made the day Shattuck filed his protest. He remembers the suit brought by Williams & Word, to which suit he was opposed, because he thought the County should pay the bonds. Word was a very distinguished lawyer, had been a member of Congress before he came to Texas. The witness does not remember when the suit was filed. He did not know much about that suit, never heard much about it nor paid any special attention to it. This suit was filed by the County of Anderson in 1874 to enjoin the payment of the bond issue to the H. & G. N. Railroad. Witness knew that Williams & Word were representing Anderson County. Here the petition and proceedings in that suit were read to the jury and introduced in evidence and to witness, the gist whereof is as follows:

The petition was filed November 14th, 1874, in the District Court of Anderson County, and styled the County of Anderson vs. H. & G. N. Railroad Company, and addressed to the Honorable M. H. Bonner, Judge. It set out that the railroad had built the road into Anderson County, "and have a principal office and depot in said county," and that "said company proposed that they would build their said road to and through the County of Anderson to the town of Palestine, in said county, by or before the first of July, 1873," provided the county would donate \$150,000 in bonds, and that it "would continue their said road from the town of Palestine to the northern line of said County of Anderson within three years; provided the county would donate \$50,000 more to the first company that would build a railroad to said northern line through said county." Next was set out the proceedings heard in the County Court for the election and the declaring of the election and issuing the

bonds, all of which are set out above. These proceedings were all attached to the pleading as exhibits or specifications thereof, and included the petition for the election, the order for the election, commencing the first of May, 1872, the decree on the election declaring it had been carried, the application of Galusha A. Grow, President of the Houston & Great Northern Railroad Company, for the bonds, the order of the court to issue the bonds, and Shattuck's protest, all as have been set out above. It was contended in the petition that the election had been fraudulently held, that unqualified voters had been registered and permitted to vote, and that there had been various irregularities, and further:

“Plaintiff further charges and shows that the aforesaid proposition was one and the same voted for as such, and the said company represented and pretended by their agents and friends that if the said proposition was carried, the said company would continue said road and build the same from Palestine aforesaid to the northern line of said Anderson County within three years; and it was upon the faith of that promise, the people believing and confiding in said promise, that the said proposition was voted for by those who did vote for said proposition, believing that the whole proposition would be accepted and acted upon in good faith by said company, and the said road would be extended through said Anderson County to said northern line. But the said company, instead of extending their said road from Palestine to the said northern line of said county, as they were in good faith bound to do, combined with the International Railroad Company and ran their road with and on the International Railroad, from Palestine, going out of said Anderson County in the eastern part of said county and continuing to the town of Troupe, in the County of Smith, forty-six miles east of the town of Palestine, thence running the said Houston and Great Northern Railroad northward to Tyler in Smith County and Mineola in Wood County, thus abandoning all intentions, if any they ever



had, of running and building their road to the northern boundary line of said Anderson County. Wherefore the said plaintiff charges that the said company have not complied with the terms, intention and spirit of said proposition submitted to the voters of said Anderson County, by the means and in the manner aforesaid, and that the said pretensions and promises of the said company were false and fraudulent, the voters of said county believing and confiding in said pretensions and promises, were deceived and defrauded by the failure of said company as aforesaid to run and build said road to the said northern line of said county. The said plaintiff shows that the first payment which purported to be due on said bonds, purported to be due and payable on the first day of January, 1874, and that the collector of taxes for said Anderson County, notwithstanding the utter want of legality in the issuance of said bonds, and the aforesaid fraud, with which the said registration and election was tainted, as above shown, proceeded to collect and did collect the said tax, so unlawfully by the said County Court for the year 1873 assessed, amounting to about fifteen thousand dollars, with the cost of five hundred dollars for the collection of said tax, so unlawfully assessed by the said County Court, and the said collector paid the said tax so collected to the treasurer of said State, and the said treasurer paid the same over to the said company on the first day of January, 1874, which said sum of money so illegally and unlawfully levied and collected, and so paid over to the said company as aforesaid, they, the said company, still hold and have appropriated the same to the use of themselves, and refuse to refund or return the same to the said plaintiff, although the said company well knew the fraud and imposition by which said sum was so illegally and fraudulently collected of the plaintiff, and the said company refused to refund or pay back said sum to the plaintiff, although often requested so to do, pretending that they are legally and justly entitled to the same, and also pretending and claiming that they

are entitled to the said bonds, coupons and to the taxes so illegally and fraudulently levied to meet said bonds and the interest thereon, and the plaintiff charges, that the said company, through their president and agent aforesaid, who was present, and witnessing said election, and the manner in which and the means by which, as above stated, the said election was conducted, well knew the illegality of said election and the fraudulent manner in which the same was conducted, as above stated, and that the said proposition had not been voted for, as required by law, yet the said company are urging and requiring the sheriff of said county to collect the assessment of taxes for the year 1874, for the payment of said bonds, interest thereon and coupons."

The prayer of the petition was that the H. & G. N. be cited, and that the bonds of the county for \$150,000 be delivered up and cancelled and for general relief and damages. Also in this connection there was introduced further proceedings in such suit, to-wit: Citation served upon the agent of the Houston & Great Northern Railroad Company. Motion to quash this was made on the ground that the service was not complete, and did not show service on the president or secretary, nor that a copy of the citation had been left at the principal office of the Houston & Great Northern Railroad, which was set out to be in Harris County, Texas, which motion was sworn to by Evans, a citizen of Harris County, Texas. This motion to quash the plaintiff, Anderson County, by Word & Williams, answered, among other things, that the H. & G. N. had an agency or representative in Anderson County. In their answer they did not deny that the principal office and headquarters were in Harris County, at Houston, Texas. The court overruled the motion to quash on the ground that the return of the sheriff showed that citation was served on the agent of the railroad in Anderson County. The defendant, H. & G. N., then filed its sworn plea, sworn to by Evans, its secretary, dated the 25th of November, 1874, as follows: "That defend-

ant's principal office is located in the City of Houston, County of Harris and State of Texas, in the manner prescribed by law, and has been so located since its organization, and is entitled to be there sued, and that there is no principal office of said company located in Anderson County, wherefore defendant says that this court has no jurisdiction, and prays judgment." In answer to this pleading, the plaintiff set up that the railroad had offices at Elkhart, at Nechesville and at Palestine, in Anderson County, and depots and agents there, and that "said office at Palestine is the principal office of said Anderson County." A temporary writ of injunction was issued, restraining tax collection for the bonds and the railroad from selling the bonds. The H. & G. N. demurred, and subject to its demurrers, set up various special contentions. The case went off on demurrers, but defendant traversed the allegations of the plaintiff and represented that the principal inducement of the people was to have respondent road connect with the International Railroad at Palestine; by the general issue, and special plea, and denied that it had "in any particular failed to carry out in good faith any agreement, contract or mutual understanding between it and the people of said Anderson County, and avers that it has kept and fully performed in both letter and spirit every contract, agreement or mutual understanding with them, with reference to the construction of its road." This answer was sworn to by R. S. Hayes. He stated in his affidavit "that the matters and things stated in the above and foregoing answer which are stated as of my own knowledge are true, and those stated on information derived from others, I believe to be true." In a supplemental pleading the county set up that the suit was brought by the order of the County Court, composed of the Justice of the Peace, to-wit: "D. A. Calhoun, Presiding Justice, and I. H. Huen, W. L. Durden, I. M. Hughes and W. R. Anglin," all of whom were present, except Durden, when the order to bring the suit was made to May Term, 1874. Motion was made, by

the defendant, to dissolve the injunction, and by another supplemental pleading the county set up that it was not estopped by the order of May 6th, 1872, declaring the election to have been carried, that the order was not a judicial order, and that the acts of the County Court generally in directing the election and approving the same and issuing the bonds were not judicial in their character. The H. & G. N. Railroad again demurred, and the District Court hearing the demurrers sustained the same, "Because it is considered by the court that the plaintiff's original and amended petitions show no cause of action against the defendant, it is therefore adjudged that the defendant's general demurrer or exceptions to said original petitions be and the same are hereby sustained." The county then took leave to amend again, and in its amendment set up that the frauds alleged had been concealed and that the suit could not have been brought sooner than it was. The defendant railroad then again demurred, among other grounds, because the plaintiff, the county, was attacking its own acts and things done by itself, and demurred generally. Whereupon on the 28th of December, 1875, the railroad's demurrers were again sustained, and the case dismissed and the county appealed. Nowhere in these proceedings was it charged that the railroad had broken its contract by failing to place the general offices, the shops and round houses at Palestine, in Anderson County. These matters being introduced, the cross-examination of the witness Wright proceeded thereon, as follows:

The witness conceded that he knew that when this suit was filed the general offices were in Houston, but stated that he did not know what allegations were made in the petition; that he thought that the shops had been commenced in Palestine in 1873, and that the blacksmith shop and round house of the H. & G. N. were in operation in 1874 in Palestine; that he did not refer to the International, but that such shops as were in Palestine were used by both companies, and said that he did not know

whether the H. & G. N. had anything else to move, but both companies were working together, and it was his understanding that the H. & G. N. had then moved its shops from Houston, and the International had moved its shops from Hearne. He knew about the International, because he saw the shops being moved from Hearne. The witness was then taken on his testimony, as to what occurred in the interview testified to by him with Hoxie and Hayes, in his private car on the Magnolia Street crossing, in the beginning of the year 1875. He said that after they got to the car, Mr. Hoxie came right out and said what his business was; that he had a letter from Mr. Grow, stating that he wanted him to bring the general offices to Palestine; that they were as much a part of the contract as the shops were and he (Grow) had agreed with Judge Reagan and the citizens of Palestine that they would do it, and wanted to fulfill the contract. The witness said that that is the substance of Mr. Hoxie's statement about the Grow letter; that Mr. Hoxie also said that they had no houses for their men and general officers, and they would come right away if "we had any houses for his men," that if they could get houses for his men to live in, they wanted to come. Then Mr. Ozment, who was there with us and representing the Palestine Land and Building Company, asked Mr. Hoxie what kind of houses and about how many he wanted, and Mr. Hoxie enumerated several heads and said he wanted some pretty good houses and some cheaper, for the other employees; and Mr. Ozment said the Land & Building Company would undertake to build them right away. Mr. Hoxie said that three or four of the houses would have to be good houses and the others cheaper, and Mr. Ozment said that they would be ready to begin work on them right away, and asked about the plans and specifications; and Mr. Hoxie asked Capt. Hayes how long before he (Hayes) could furnish the plans and specifications for these houses and for the McCoy and possibly the Evans house, and Capt. Hayes said he could do it right away. The witness

stated that no house was built for Hoxie and Hayes, but that after they returned to Houston they got some money from Mrs. Hoxie and they built their own house. The witness was asked who else was in the car; said he did not remember, but possibly a secretary or stenographer of Hoxie, and that there were one or two others in there, the witness thought, Mr. Ligon and a man named Bush, one of the stockholders, and also Royal, a stockholder in the Palestine Land & Building Company, a corporation.

"Q. Who else, now? A. I don't remember; there were four or five.

"Q. Who did the talking on that car for that private corporation? A. Mr. Ozment did the most of it.

"Q. What was his position with that private corporation then? A. He was secretary and treasurer and manager.

"Q. Of that corporation, the Palestine Land & Building Company? A. Yes, sir.

"Q. That private corporation was organized for profit? A. Yes, sir.

"Q. Did you really incorporate? A. I think so.

"Q. The business of that corporation was building houses, and things of that sort? A. Yes, sir; and dealing generally in real estate.

"Q. It was in the real estate business? A. Yes, sir; properly speaking, it was.

"Q. And while it was incorporated, I wish to ask you how long it continued in business? A. That corporation?

"Q. Yes, sir. A. I couldn't tell you, but sometime afterwards.

"Q. Two or three years? A. Yes, sir; I think so.

"Q. Now, you mentioned Saturday a house built there by this corporation there on the corner of May and Dallas Streets, now known as the Bennett Hotel? A. No, sir, Bennett.

"Q. You say that house was built there and occupied by an employee? A. No, not an employee, but by McCoy.

"Q. He was at the head of some department, was he?  
A. He was general passenger and freight agent.

"Q. How long did he live at that place? A. He lived there a year or two, I think.

"Q. When did that corporation sell that place? A. I can't tell you.

"Q. It did sell it within two or three years? A. I think they did.

"Q. Do you remember who bought it? A. No, sir.

"Q. Dr. Link bought it? A. No, sir, not that; he bought it after that time sometime.

"Q. Who occupied it after McCoy? A. I couldn't tell you that.

"Q. How long did McCoy occupy it as a tenant for this private corporation? A. I don't know how long exactly.

"Q. The name of that corporation was the Palestine Land & Building Company? A. Yes, sir.

"Q. About how long did McCoy occupy that house as its tenant? A. Mr. Ozment could tell you that, I guess.

"Q. Two or three years? A. I suppose he did.

"Q. And the next residence that you mentioned—just mention it now in the same order? A. I believe next was the Reeves place.

"Q. Is that the same house that is there now? A. No, sir, that is not the one there.

"Q. Who occupied that? A. I don't know; some of the heads of the departments.

"Q. Who was it, do you remember? A. No, sir.

"Q. How long did whoever it was occupy it? A. I couldn't tell you.

"Q. Two or three years? A. I suppose so.

"Q. The corporation sold it then? A. I don't remember.

"Q. They don't own it now? A. No, sir, they finally sold it.

"Q. Do you remember when they sold it? A. No, sir.

"Q. Now, name the other one? A. Where Mrs. Young



is now, at the corner of Combination and Magnolia Streets.

"Q. Who occupied that as a tenant for this private corporation? A. Some of the general officers.

"Q. You don't remember which one? A. No, sir.

"Q. Are you sure any did? A. Yes, sir.

"Q. For two or three years? A. I think so.

"Q. The private corporation then sold it? A. Yes, sir; they finally sold all of their property.

"Q. The same course was taken as to each tenant house as you have described with reference and the same as the three tenant houses about which you have just given details about? A. Yes, sir.

"Q. All of them were occupied for two or three years as tenants for this Palestine Land & Building Company? A. Yes, sir; I think so.

"Q. And after that they were all sold out by this corporation? A. Yes, sir, within a few years.

"Q. And that corporation has disposed of all of its properties and gone out of business many years ago? A. Yes, sir.

"Q. You were a stockholder of that corporation? A. Yes, sir, part of the time.

"Q. You don't remember just when it was dissolved? A. No, sir.

"Q. You mentioned two other houses Saturday that you and Mr. Ozment built? A. Me and Mr. Whitesell.

"Q. And Mr. Ozment built some outside, too? A. I think so.

"Q. Both being stockholders of this company? A. Yes, sir.

"Q. And also Mr. Whitesell? A. I don't know whether he was or not.

"Q. Well, you were? A. Yes, sir, and Mr. Ozment.

"Q. You went down on May Street and built two houses there, and before you finished them up you sold them to this private corporation in which you were a stockholder? A. After they were finished.

"Q. Before they were occupied? A. Yes, sir.

"Q. You are sure about that? A. Well, really I couldn't say for sure about that.

"Q. You never rented them to anybody? A. Yes, sir, it seems to me that we did rent them to somebody; I know somebody moved into them.

"Q. Do you know whether or not that was before or after you had sold them to the corporation? A. I don't remember about that now; we had an agreement with them to build them.

"Q. With the private corporation to build the houses and sell them to them? A. Yes, sir, I think we did.

"Q. You really made a profit out of it for yourselves? A. Yes, sir."

Mr. Wright was next cross-examined on the speech that he said Mr. Grow made at the Court House just before the election of 1872. He said that Mr. Grow said that there had been some doubt expressed whether or not he had made the contracts with Reagan, representing the citizens of Palestine, to run the railroad into Palestine and build the shops, round houses and general offices there permanently; that he had authorized Judge Reagan to make that statement, and now made it himself. Mr. Wright said that he would not say that these were the exact words used by the speaker, but that was the substance. Then Mr. Grow went on to enumerate the great benefits which would come from the establishment of the shops and general offices there; that the population would increase to as many as five thousand within five years, it then being only twelve or fifteen hundred; and further, Grow said in that speech that mechanics and their families, whom he would bring to Palestine, would all be consumers; and everything for sale would find a market at Palestine. This speech was made in the presence of a large crowd; he thinks in the presence of 1500 people, on the north side of the Court House, Grow standing on the steps. The witness was asked whether or not after forty-two years he could say that Grow said in that

speech that Judge Reagan represented the people of Palestine, as distinguished from the people of Anderson County. He answered: "My recollection is he said Palestine, and he may have said Anderson County. Q. Now, what is in your mind, Mr. Wright, that causes you to think of Palestine in this matter, as distinguished from Anderson County? A. Well, the whole county and town were interested in carrying the bonds. Q. The whole county and the town? A. Yes, sir." The witness said that he did not remember that he was looking for the distinction to be made between the county and the town, but that his understanding was all the time that Judge Reagan was out in the interest of the citizens of Palestine especially, but he did not know that he was thinking of that when Grow was speaking; that all of the people were thinking about getting the general offices, round houses and machine shops and headquarters there of the railroad; that he thinks the road was then headed to Alto, and it was his understanding that a preliminary line had been run in that direction, and that the county was very much interested, as the county, in getting the road, and he understood Anderson County and Palestine had a common interest, but Palestine had a special interest, too; that he could not tell how many feet from the center of the town the special interest reached. The witness said that he had been a pretty busy man. Testing his recollection of events, he was asked whether or not he had any important business transactions with anybody in the year 1871. He said he did not know; that all of his transactions were important to him, and so in 1872, but that he could not specially name any particularly important business transaction that he had in 1872, nor in 1873, nor for about twenty years; nor could he remember the date when Governor Coke was Governor, nor when Ireland was elected Governor, but he remembered circumstances about both; that he had testified that he built the Anderson County Court House, but did not remember the year he signed the contract or the exact date, but it was about

twenty-seven or twenty-eight years ago. He remembered the amount of money he was to get in the contract, but could not remember the other elements in the contract; presumed that they were the customary ones. Witness admitted that he remembered subscribing for stock in a railroad company about two years before he testified, a proposed line from Corsicana to Palestine, and a branch to Dallas, and that his recollection was that the examiner (Mr. Morris) and Mr. Gregg prepared a contract in connection with a railroad donation to get that railroad into Palestine, and that the examiner (Mr. Morris) did the work himself; that the provisions were read over by the witness and discussed. It was then demanded of the witness that he state the important terms of that subscription contract executed about two years since. He answered: "My recollection is that we were to construct a road from Corsicana to Palestine, and a branch to Dallas; I don't remember the other exact conditions of it now." That he, witness, put up money, but did not have much faith in the building of it, but that he signed the contract, he thinks; but that he took the examiner's (Morris) and Gregg's word for it; that he had confidence in them. He was asked: "Do you or not remember that there was a special provision in that contract about the general offices and machine shops of that proposed railroad, where they would be located? A. I believe there was some sort of condition to it like that. Q. What was it? A. I don't remember it. Q. Where were these things to be? A. I don't remember that now. Q. You remember these other things about Judge Reagan and the Reagan-Grow contract? A. As I have told you, yes, sir. Q. Was there a provision in this contract of just about two years back that the machine shops, general offices and round houses of that proposed railroad were to be located at Palestine? A. I don't remember the exact conditions." The witness, in answer to the special questions as to this recent proposition, said that he remembered that the road was to start at Palestine and build toward Corsicana,

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or start at Corsicana and build toward Palestine; and questioned about any provisions in that contract as to round houses, machine shops and general offices, said he did not remember exactly what it was, but that there was something said about it; and that he believed that it was his recollection now about it that there was a controversy in this regard with the officials of the proposed railroad, and that these things were to be at Palestine forever; but being asked whether or not it was not specified that in this proposed railroad of two years back it was specified that the machine shops, round houses and general offices were to be kept at Palestine only so long as the road was operated as an independent line, he said: "I think that condition was in there; I am not certain about it, though," and that he now makes these statements when his attention is called to them by the examiner. He was asked how it was that he could remember things forty-two years ago and not remember with a certainty a similar transaction two years ago, and he answered that this matter of the I. & G. N. general offices and shops had been a matter of continuous excitement, and started to say something about Judge Reagan. It was objected that he should not unload hearsay into the case, but the witness continued that he and Judge Reagan would talk about it. He was then asked whether or not he was testifying from his independent recollections or from hearsay from Judge Reagan, and he stated, from what he recollected himself, but that he and Judge Reagan had very frequently had conversations about this matter which had refreshed his memory; that he knew as much about the transactions as Judge Reagan, and they merely talked over what had occurred. Judge Reagan is dead. He was asked to state any business transaction he had had of his own, and said if he stopped to study about it he could, and mentioned one that he remembered, a transaction with the I. & G. N. R. R. Co. in 1885 or 1887.

On re-direct, Mr. Wright was asked by plaintiffs' coun-

sel to state what took place between the citizens in Hoxie's private car at Magnolia Street crossing in 1875, after he (Hoxie) stated that he desired certain houses to be built. The defendant objected that this matter had been gone over, but the witness answered: "We had a conference there among ourselves. It was right in the car there, and we got together and talked about what we could do, and we agreed that we could build the houses, and Mr. Ozment said he could take care of most of them and we would take care of the balance, and that is what we agreed to do, and we then authorized Mr. Ozment, who had done most of the talking theretofore, to accept the proposition from Mr. Hoxie; that we would build the houses as required by him."

22nd. Mrs. John H. Reagan was the next witness for plaintiffs, and testified that she married Judge Reagan in 1866, and that he made Anderson County his residence about 1852, where he thenceforward resided, except when in Congress or the United States Senate, or on the Railroad Commission, or in the Confederate Cabinet; and that in March, 1872, he was residing at Fort Houston, about a mile and a half west of Palestine, Mrs. Reagan's present home. Witness stated that, of her own personal knowledge, she knew of the meeting between Judge Reagan and Mr. Galusha A. Grow, president of the H. & G. N. R. R. Co., which followed some correspondence between them, which was in turn led up to by correspondence between Judge Reagan and General Barnes, who was then president of the I. & G. N. R. R. Co., and living at Navasota, witness thinks, in Grimes County. Witness was unable to recollect the date when Mr. Grow came to Judge Reagan's residence, but it was about the middle of March, 1872, and he was accompanied by Mr. Noble and Mr. Wright, who, with the witness, were alone present at the conference. Witness was now requested to state what took place in her presence, after Mr. Wright took Mr. Grow and Mr. Noble to her residence about the middle of March, 1872, that is, with reference to any matters in-

volved in the present litigation. To all of which the defendant objected, and to any testimony on this point, making the objections set out above in Bill of Exceptions No. 12, which objections were each carefully stated to the court; the court having considered the same, overruled them, and to this action of the court the defendant excepted and took its Bill of Exceptions No. 19, and, over these objections, Mrs. Reagan testified as follows: The discussion was and the object was to try to get the road into Palestine, and Mr. Grow insisted upon a bond issue or bonus of \$200,000 from Anderson County, and Judge Reagan insisted on holding them down to \$100,000; and, for the first bonus, which Mr. Grow asked, in addition to having the road come to Palestine and connect with the International, he offered to establish and maintain forever the general offices and machine shops of the road at Palestine. To this offer, Judge Reagan responded, that he did not believe that the people of Anderson County could afford \$200,000, it being so soon after the war; and, the people being so much impoverished, after going through reconstruction days, he did not believe the county could afford it; but Judge Reagan said he would do what he could about it, and he suggested \$100,000 as a proper amount; and then they discussed a compromise, and really discussed that subject some little time, and, in that connection, Mr. Grow wanted to show the advantages to Anderson County and Palestine of having the machine shops and general offices located at Palestine. He said the distribution of such amounts of money there among the employes of the shops and general offices would be of great value, and would put up the prices of country produce and such as that; and that the people who had butter and eggs to sell would find a good market there, and that eggs that were selling three dozen for 25 cents would go up to 25 or 30 cents a dozen, and other produce would find a market in like proportion; and his object was to show the advantages in having these shops and general offices there, and he wanted Judge Reagan to



canvass the county, to try to get this bonus. Mr. Grow, as well as other people in favor of it, wanted Judge Reagan to do that, and insisted upon his canvassing the county for that bonus. Witness was asked what was Judge Reagan's final response, and what was the final result of the meeting at his residence at which the witness was present, and she said: "Why, they had not come to any conclusion, but decided to have another meeting the next morning in Palestine, at a certain hour, I can't remember which hour, but I am sure in the forenoon."

"Q. What was the next thing you knew about this affair? A. When Judge Reagan returned from Palestine the next morning and I asked him \* \* \* "

Mr. Morris, for the defendant: "We object to that."

"Q. You need not state what he told you, but what was the next thing you knew, Mrs. Reagan, with reference to Judge Reagan getting ready to begin a canvass of the county? A. A few days after that conference, Judge Reagan began to make preparations to canvass Anderson County, and the witness' recollection was that he was canvassing the county for about ten days or a little more, in the different voting places of the county."

The witness was not cross-examined.

23rd. Jno. F. Watts was called by plaintiffs, and testified that he lives in Palestine and has lived there since 1857, with the exception of about eight months, in 1868, when he was temporarily in Waxahachie; he has been County Surveyor, County Judge, Mayor of Palestine, member of the City Council and Justice of the Peace, and is now a member of the City Commission of Palestine. He remembers the election held for the purpose of voting \$150,000 in county bonds to the H. & G. N. R. R. in 1872, and was present at the public meeting at the Court House, at which Galusha A. Grow made a public address, and he heard Judge Reagan introduce Mr. Grow. He was then requested to state what Judge Reagan said and what Mr. Grow said on that occasion, to which the defendant objected, making the objections set out above in Bill of Ex-

ceptions No. 12, and again recited to the court, which objections being considered by the court, were by him overruled, whereupon the defendant took its Bill of Exceptions No. 22 to such action of the court, and, over the objections, the witness, Watts, testified as follows: That Judge Reagan presented Mr. Grow and said he was introducing the president of the H. & G. N. R. R., and that Mr. Grow would verify the several statements he had made to the people in regard to the location of the shops and offices and things of that sort, and that Mr. Grow said that it seemed that some had doubted the statements which Judge Reagan had been making in his speeches, and that the shops and offices would be located there at Palestine. And Mr. Grow told in his speech to the crowd there of the benefits that would come to them, and not only to them but to their children and children's children, for the future generations, or the generations unborn; he said one or the other.

The witness was not cross-examined.

24th. P. H. Hughes was called by plaintiffs, and testified that he resides in Palestine, in Anderson County, and is in the real estate, fire insurance and telephone business; and has lived in Palestine since 1881, and in the county forty-four years, and became of age on the 6th of March, 1871; and that he heard a speech made in Palestine prior to the election for the bonds, by Mr. Grow, speaking from the north stile steps of the Court House. He did not hear Judge Reagan introduce Mr. Grow, as he was late getting there, and Mr. Grow had just started his speech when he, the witness, came up. The witness was then requested to state what Mr. Grow said in his speech, to which the defendant opposed all the objections contained in its Bill of Exceptions No. 12, each being recited to the court, and were by the court overruled, and the defendant took its Bill of Exceptions No. 21, and excepted to the ruling of the court, and over these objections the witness testified as follows:

That Grow had just commenced speaking when he got

there with a friend by the name of Ewing, and that they stood six or seven feet away from Grow, and he went on to state his speech: "there sorter seemed to be some misunderstanding as to Judge Reagan's representations made to the people of the county, and he said he was there to make the statement and advise them that he was fully authorized to carry out any contract or agreement that Judge Reagan had made to the citizens of Anderson County, and that he would not only corroborate all of the statements made by Judge Reagan, but that he wanted also to state to the people of Palestine and Anderson County the benefits to be derived by the people from that railroad company in there, in even saving the hauling of freight from different points on the Houston & Texas Central; that it would be so heavy that they would not know in after years that they had ever paid any additional taxes. He said in that speech that the general offices, machine shops and round houses would be located at Palestine and would remain there for all time to come." Witness said that he voted for the bond issue on that inducement and the promises made by Grow: "that these benefits would come to the citizens of Palestine and Anderson County by the location of these shops, general offices and round houses there." Grow said that they would be located there permanently, all of the time to come. Mr. Grow stated in his speech that he had made an agreement with Judge Reagan that if he, Reagan, would canvass the county "that the general offices, machine shops and round houses would be located there in consideration of his services; and as to Judge Reagan, us young fellows thought anything he told us was true; anything that Judge Reagan told us was true." This bond election was the second election at which the witness had ever voted, and his recollection of Mr. Grow's speech was very distinct.

Mr. Hughes was not cross-examined.

25th. Charles Jacobs testified that he has lived at Palestine since 1871, and was living there in the spring

of 1872, then being a merchant, and knew Mr. Grow, who came to Palestine, as President of the H. & G. N. R. R. Co., and witness heard him make his speech in the spring of 1872, in front of the Court House. Judge Reagan introduced him. He was asked to state what Grow said and the substance of Grow's speech, whereupon the defendant opposed the objections contained in its Bill of Exceptions No. 12 above, which being considered by the court, were by the court all overruled, and the defendant then excepted and took its Bill of Exceptions No. 20, and over such objections the witness testified: "Well, he was talking to the people, and there were hundreds there to hear him, as they knew he was coming to make the speech before; and he stated that they had already graded from Trinity City out several miles, but that he had agreed with Judge Reagan to come to Palestine; and he told the people right then and there that he had abandoned the road that he had graded from Trinity City out several miles; that he had abandoned that and was coming to Palestine, if the people of Palestine would give him One Hundred and Fifty Thousand Dollars in bonds; and he told them that he had agreed with Judge Reagan upon that amount, and if the people voted that amount he would come to Palestine for that amount, and promised, at the same time, that he would bring there not only the road, but also the offices they had and the shops, and retain them there forever for that amount of bonds; that is what he stated then and there."

"Q. What was the size of his audience that heard that speech? A. Well, there were several hundred there."

This speech was made in the afternoon.

Cross-examined:

Witness did not know what day it was, or the date, or precisely the month. He was asked to repeat what Grow said in that speech, and he answered that he certainly would. He said Grow commenced telling the people they had graded a portion of the road from Trinity City up several miles, but that he had come to Palestine to tell

the people that he had agreed with Judge Reagan. "He said if the people of Anderson County would give him what he had agreed with Judge Reagan, \$150,000 in bonds, that he would bring the road into Palestine, and also at the same time he promised that for that amount he would not only bring the road there, but would bring the offices and shops and maintain them there forever. Q. Forever? A. Yes, sir, amen."

26. Robert McClure was called by plaintiffs, and testified that he resided at Rusk, in Cherokee County, but was born two miles southwest of Palestine, at Fort Houston, and lived there until he came to Rusk in 1884 continuously; except while away in the army, and since 1884 has lived at Rusk, Jacksonville and Alto, in Cherokee County, and that in 1872 he was practicing law in Palestine in partnership with Ed. Bush, with his offices on the west side of the Square. Never spoke to Grow but once, but remembers seeing him two or three times, and heard him deliver his speech in Palestine on the last day before the election, or the day before that, or the day of the election, but he heard him speak from the court house steps on the north side of the Square, witness thinks in the afternoon. The witness was next asked to state what Grow said in that speech, to which the defendant objected, opposing the objections contained in its bill of exceptions No. 12 above recited to the court, and the court overruled these objections, and the defendant excepted and took its bill of exceptions No. 23, and over these objections the witness stated: That he believed Grow started out congratulating himself and feeling glad about the niggers being free, and about there being nobody in the United States who was not free. The witness thought of the loyal legion, and said he did not like that, and turned and walked away, and did not stay there much to hear him; and the next thing he commenced talking about the bonds and the benefits it would be to the town, and things of that sort, which he could give only in a general way,

but that Grow said it would be a benefit to the town and county, and would cause the town to grow and give a better market, that the town would grow, and the railroad would be there all of the time, and it would not be moved away. "I do not know that he used the word 'offices' or 'shops,' but the railroad would be a permanent thing there, and in all he spoke about 30 minutes on that." Witness says he thinks Grow did say something about the shops and offices. "Q. Just state anything that you remember that he said about that. A. I can't tell just exactly what he said, but it was my understanding \* \* \* Mr. Morris, for defendant: We object to that, his understanding. Court: He can state, under the ruling of the court heretofore, what he remembers hearing Grow say. Q. Just go ahead now. A. I don't think anything was said about that at all, that is, about any contract, but the fact of the bonds being voted, and that, if it carried, what a benefit it would be to the town, bringing the railroad there, and things of that sort. He was speaking about what the benefits would be to the town and the county to have the town right there in the center, and how much benefit it would be also to the town; that it would bring a market for everything we had to sell, better market for our cotton, and things generally of that sort."

This witness was not cross-examined.

27. Plaintiff next introduced in evidence deed from John S. Kennedy and Samuel Sloan, as trustees, to the International & Great Northern Railroad Company, dated November 1st, 1879, and executed by said John S. Kennedy and Samuel Sloan, as trustees; this deed recited that Duval, as Special Master, appointed by the Circuit Court of the United States for the Western District of Texas, conveyed by three deeds to Kennedy and Sloan as trustees the property described, and that the I. & G. N. R. R. Co. had agreed to purchase the property from Kennedy and Sloan, and to issue therefor 5374 bonds of

849  
\$1,000 each, and 500 bonds of \$500 each, secured by purchase money mortgage of even date, and 4474 bonds of \$1,000 each, and 500 bonds of \$500 each, secured by purchase money mortgage of even date, and inferior to the mortgage first above mentioned, and in consideration of \$10,348,000 so secured Kennedy and Sloan, as trustees, conveyed to the I. & G. N. R. R. Co. of Texas, its successors and assigns, in fee simple absolute, all of the properties of the International Railroad Company, including all its corporate rights and privileges and franchises, including all franchises to be a corporation, and also all the properties of the H. & G. N. R. R. Co. except lands other than those necessary for right of way, depot and shop grounds, which were not conveyed; and also certain described rolling stock, and its franchises, charter powers and privileges, and also all the rights, railroads, franchises and properties of the I. & G. N. R. R. Co., and granted to them by their charters or other laws of the State of Texas. These properties and franchises were conveyed to the I. & G. N. R. R. Co. as fully as the International Railroad, the H. & G. N. R. R. Co., and the I. & G. N. R. R. Co., or any of them, were seized thereof.

28. Next the plaintiffs introduced an agreement of counsel to the effect that the stock books of the I. & G. N. R. R. Co. of 1879 show that the shareholders who owned and voted stock therein on April 7th, 1879, and on November 17, 1879, were those shown in a certain list exhibited and introduced in evidence, and that all changes in ownership of stock between said dates, as shown by said stock books, were as follows:

Stock transfers between April 7, 1879, and Nov. 17, 1879:

- W. Walter Phelps to Jacob S. Wetmore, 5 shares September 26th.
- W. Walter Phelps to W. R. Maxwell, 5 shares October 17th.

8  
4  
9



W. Walter Phelps to W. Walter Phelps, 90 shares October 17th.

Susan Spofford to W. Walter Phelps, 100 shares July 1st.  
H. Blum & Co. to H. M. Hoxie, 2 shares November 14th.

P. J. Willis & Bro. to H. M. Hoxie, 48 shares November 7th.

Showing transfers of 250 shares between such dates. For the sake of brevity it is agreed that the list referred to showed 202 persons, owning an aggregate of 53,859 shares of stock, in blocks of various sizes from 1 to 3696 shares, on April 7, 1879, and showed the same identical 202 persons owning the same 53,859 shares of stock, in the same blocks, on November 17, 1879, save for the transfers above noted.

29. The plaintiffs next introduced a deed from the I. & G. N. R. R. Co., by Galusha A. Grow, President, to Hatfield, Jr., for the purpose, as stated, of showing the reservation in the deed of a large piece of ground in the City of Palestine for machine shops, etc., the date of same being September 15, 1874. To the introduction of which the defendant objected that it was immaterial and irrelevant, that it was executed for an alleged contract in 1872, and that an inspection of the instrument did not show that it was for the purpose stated, nor was it restricted to Anderson County, but reserved all places and rights of way and sites in other counties, and is a general conveyance with general reservations, which objections having been overruled by the court, the defendant excepted and took its bill of exceptions No. 29, and stated that in consideration of \$1.00 and other considerations acknowledge, the land described therein was conveyed, being 41 different tracts, apparently all of them in Anderson County, and some in Palestine, and running from 640 acres down to 1 acre. It is stated, at the end of the deed, that there was excepted from the conveyance the right-of-way of the railroad company, not exceeding 200 feet in width, and the lands necessary for sidings, stations houses, section

houses, depot grounds, machine and repair shops, turntables, cattle yards, and the ground at and around stations necessary for the yards and operation of the railroad, and the ground marked "Railroad Reservation" in all cases on the maps of the towns and of the railroad company filed in the offices of the Clerks of the several counties, and also excepted town lots and parcels of land conveyed by the International, H. & G. N., or the I. & G. N. R. R. Co., prior to the date of the deed.

30. The plaintiffs next offered a reconveyance from the Texas Land Company, which deed stated that grantor was the assignee of Hatfield, Jr., to the I. & G. N. R. R. Co., dated November 8, 1880, described by field notes the land reserved in the original conveyance to Hatfield, Jr. To this deed the defendant objected that it was immaterial and irrelevant, and is the same general conveyance with reservations; which objections being overruled by the court, the defendant excepted and took its bill of exceptions No. 30, and over the same this instrument was introduced in evidence as follows: It referred to the deed to Hatfield, and stated that Hatfield had conveyed the lands acquired by him to the Texas Land Company, and this deed defines and conveys them to the I. & G. N. R. R. Co. at great length, and among the tracts reserved and defined to the I. & G. N. R. R. Co. is 87.10 acres described by field notes, being the land in the City of Palestine upon which the machine shops, roundhouse, etc., and the general office building, are situated, said 87.10 acres being part of the land marked "Railroad Reservation" on the maps afterwards introduced by plaintiffs.

31. The plaintiffs offered in evidence a map in the deed records of Anderson County, purporting to show the "Railroad Reservation," filed December 12, 1872, marked "Office of Chief Engineer and Supt. of Construction, International Railroad, Hearne, Texas, June, 1872," to the introduction of which the defendant objected as (1) being immaterial and irrelevant, and (2) that it re-

lated to acts of the International R. R. and not the H. & G. N. R. R., (3) that it was dated long after the matters alleged to have occurred in litigation, which objections were overruled and the map was introduced in evidence over the objections of the defendant, who excepted and took its bill of exception No. 31. The map is as follows:

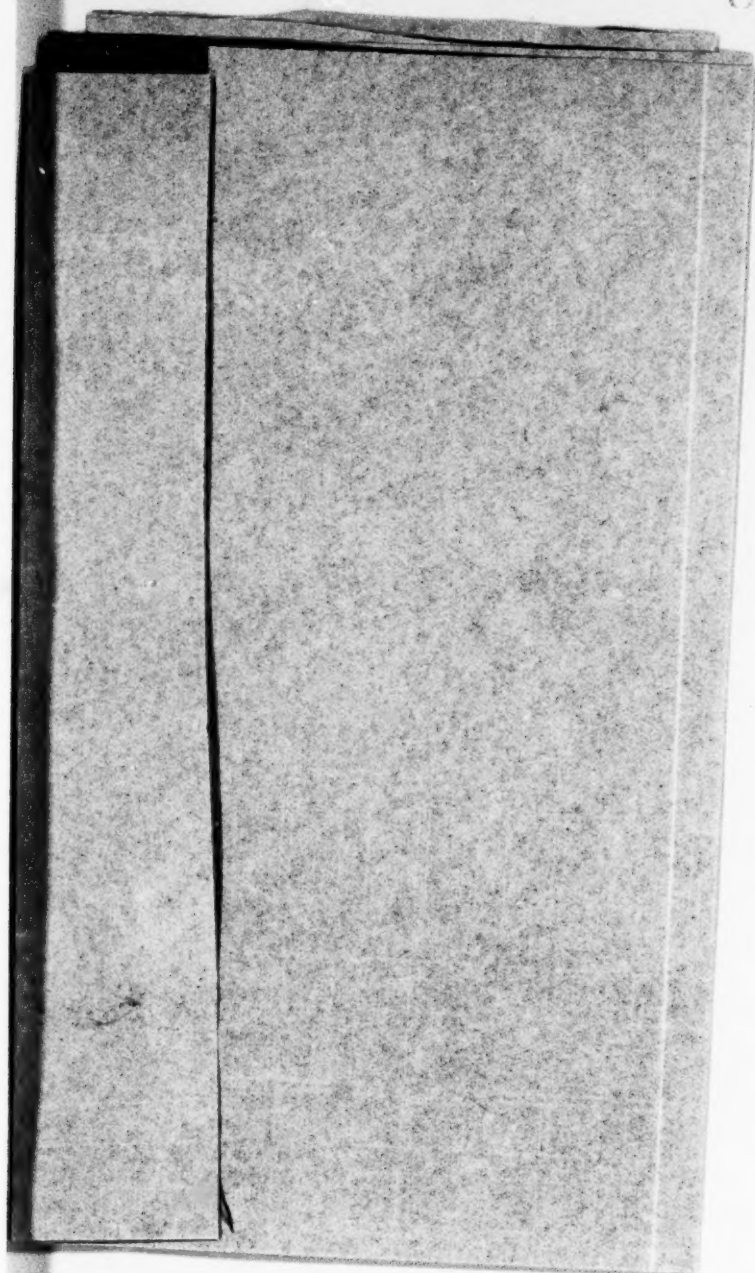
**BLUEPRINT**

**TOO**

**LARGE**

**FOR**

**FILMING**



32. The plaintiffs next offered in evidence a map filed in the office of the County Clerk of Anderson County on June 24th, 1875, to the introduction of which the defendant objected as: (1) immaterial and irrelevant, (2) because it was an act of the International and not of the H. & G. N. R. R., (3) that it is in evidence that the H. & G. N. R. R. moved its headquarters from Houston to Palestine at a date prior to this, and therefore that the map is immaterial, which objections were overruled, and the defendant then excepted and took its bill of exception No. 32, and over these objections the map was introduced in evidence, as follows:

33. The plaintiffs offered in evidence 4 deeds from the International R. R. Co., by J. Sandford Barnes, President, to various citizens of Palestine, referring to the map filed December 12, 1872, for description, and of date, one June 1st, 1872, two June 6, 1872, and one June 20, 1872. The defendant objected to the introduction of these instruments, (1) because immaterial and irrelevant, (2) because acts of the International R. R., and not of the H. & G. N. R. R., and that there is no contract asserted here of the International R. R., which objections being overruled by the court, the defendant excepted and took its bill No. 33, and over these objections the deeds were introduced in evidence, and are as follows: Deed from the International R. R. Co. to Swanson of Anderson County, Texas, on consideration of \$680.00 gold, cash, conveying lots 7 and 15 in block 164 in Palestine, as shown on the map of the International R. R. Co.; deed from the International R. R. Co. to Fowler, Shumate and Wright, in consideration of \$666.00 gold, conveying lots 2, 3 and 4 in block 164, as shown on said map. Deed from the International R. R. Co. to Murchison Coleman Larkin for \$427.00 gold, conveying lot 6, block 163, shown on said map. Deed from International R. R. Co. to Julia M. Whittle, for \$350.00 gold, conveying lot 9, block 163, as shown on the map.

34. Plaintiffs introduced excerpt from the answer filed by the I. & G. N. R. R. Co. in a suit by the State of Texas against it, the answer being of the 23rd of May, 1888, this excerpt being as follows: "Defendant says it is not true that it has no *bona fide* managing or controlling officer in Texas; nor is it true that it has not a general office in said State. The truth is, that it has a general office at Palestine, on its line, at a junction of the Houston & Great Northern line with the International proper, which it has always maintained, and does yet, and where the annual meetings of its stockholders and directors are now and ever have been held pursuant to notice as required by



law, and where its stockbooks and all other books of said company are constantly kept, which by law it is required to keep at said general office, and where it has also a Secretary in charge of them, who resides at Palestine, and there is always some one there who resides there, and who is authorized to settle and adjust all claims against it.

"It has also, at its said general office, a general claim agent for the adjustment and settlement of all stock and damage claims against said company. It has now, and has ever had, residing at its general office at Palestine, a Superintendent of all its lines in Texas, with full authority to act in all matters upon his own judgment, or under the advice of defendant's counsel, all of whom reside at the principal points on its line in said State, including Palestine."

Plaintiffs' counsel stated that he asked the court to limit this document to the issue raised by defendant with regard to the alleged removal of the general offices from Palestine to St. Louis from 1881 to 1888.

35. A. L. Bowers, called by plaintiffs, testified that he was mayor of Palestine, and was formerly an employe of the H. & G. N. and of the I. G. & N. R. R. Co., commencing August 1st, 1871, and had once been Superintendent of Construction. In 1871 the shops of the H. & G. N. R. R. Co. were in Houston, and of the International at Hearne, and it is a fact, within his own knowledge, that the work of dismantling the shops of the International at Hearne had begun in December, 1873; he was then at Hearne. The earliest date on which he can state, on personal knowledge, that the shops of the H. & G. N. R. R. had been discontinued at Houston was in 1874. He knows this, because he took down the H. & G. N. shops at Houston at that time, but they had been abandoned some time before. The shops of the I. & G. N. R. R. have been gradually built up and increased all the time in Palestine since 1873. The witness then described the shops at Palestine as they now exist. He described the machine shops as a

brick building about 85x240 feet, another building 32x40 or 50 feet; a brick repair shop and coach building shop, one end of it being possibly 200 feet wide, with an "L"; and the other end not more than 75 or 80 feet wide; the whole building 85x240; brick building, with slate roof, concrete floor, about 30x40; blacksmith shop about 120x120 with 40 fires in it; boiler shop between 80 and 100 feet wide and about 200 feet long; a wooden building, a round-house with 14 or 16 stalls, which is a wooden building with a cement roof; two car sheds about 40x150 or 175 each; a number of other smaller buildings; and a 2-story store room about 38x100 feet; and a bridge and building house about 28x40 feet with two additions to it now, and all about 30x80 feet; and a blacksmith shop in addition; and another repair shop about 26x100 feet; and in addition a small wooden building 20x75 feet; and the steel house recently built, besides there is an electric light plant, and artesian wells, and lakes. The general offices were moved from Houston to Palestine in 1875, and first occupied a wooden building, being a wing to the shop, and the present general office building was constructed in 1878; it is a 3-story brick building, 40x130, lower story with a concrete floor, the other stories with wooden floors, and was a first-class building when built, and is still in good condition; that there are about 24 rooms in the building, and it stands on a piece of ground of several acres. The railroad has lots of ground for building, and the general office building would be considered a good, up-to-date building now in any town, not excepting Houston and Dallas.

Mr. Bowers was not cross-examined at this point.

36. J. W. Ozment testified for the plaintiffs as follows: He lives in Palestine, and came to Texas in 1849, locating at Rusk, and in 1865 he moved to Palestine and became a merchant for a while, then built the electric light plant, organized a bank, and afterwards bought the telephone system, and is now Secretary and Manager of

the Telephone Company. Has been in the fire insurance and real estate business at Palestine for over forty years. He knew Mr. Grow when he was President of the H. & G. N. R. R. Co. Mr. Grow made a speech at Palestine in 1872 a few days before the election, in the afternoon, on the north steps of the court house; Judge Reagan introduced him. The witness was next asked to state what Reagan said, and what Grow said in those speeches, to which the defendant opposed the same objections, as set forth in its bill of exceptions No. 12, all of which objections were submitted to the court again and by the court overruled, to which action the defendant excepted, and then and there took its bill of exception No. 24, and, over the objections, Ozment testified as follows: Judge Reagan said that he and Grow had been in Congress together, and Grow had been Speaker of the House of Representatives, and made some preliminary remarks of that sort, and then talked about the building of the H. & G. N. R. R. into Palestine, and said he had made an agreement with Mr. Grow to bring the road into Palestine to connect with the International R. R., and further, that the shops, general offices, roundhouses, etc., would be located there for always, and that he had an agreement with Mr. Grow that Anderson County was to issue \$150,000 of the County Bonds, bearing 8 per cent. interest. When Judge Reagan finished, Mr. Grow first replied to Judge Reagan's complimentary remarks, and made some of the same sort about Judge Reagan; and then stated that he had made an agreement "with Judge Reagan and the citizens of Palestine to establish the roundhouses, machine shops and general offices there, on condition that a bond issue of \$150,000 was carried by Anderson County." "Q. You had better state the whole thing over; just repeat now what Mr. Grow said. A. Mr. Grow said he had made an agreement with Judge Reagan, for the citizens of Palestine, conditioned that if Anderson County voted the \$150,000 bond issue of the Anderson County bonds,

that he would bring the H. & G. N. to Palestine to connect with the International R. R. there, and establish their roundhouses, machine shops and general offices there, and said that they would be there for all time to come; and he went on then to elaborate very greatly on the great advantage and benefit it would be to the citizens of Palestine, as well as to all of the farmers of Anderson County; and that the International road furnished no accommodations to our people anyhow, and that all of our cotton, produce, and everything of that kind, brought or shipped to market, was at the mercy of the Houston & Texas Central at Hearne, Texas." (The witness parenthetically stated, in answer to proper question, that the round houses and machine shops of the H. & G. N. R. R. were commenced at Palestine in 1873, and were constructed on the railroad ground given to the International by the citizens.) He was standing on the steps, when Mr. Grow was speaking, right behind him, and he could have held him by his coat tails. There was a good crowd present, and the space in front of the court house, on the north side, was filled with people. The witness thought that now over half of 70 acres were covered by the shops and other buildings of the I. & G. N. R. R. Co. at Palestine.

Mr. Ozment said he knew Mr. H. M. Hoxie from the time he came to Palestine until he left; that in 1875 he got a telegram from Mr. Hoxie, who was then General Superintendent of the I. & G. N. R. R.; that Hoxie wired the witness to meet him at a certain time in his private car, at the Magnolia Street crossing in Palestine, and to notify Geo. A. Wright and some of the other leading citizens of Palestine to also meet him; and he notified Mr. Wright and other leading citizens, and they met Mr. Hoxie at the Magnolia Street crossing, and went aboard his private car; that he, Mr. E. W. Bush, Mr. Wright, and he thinks 5 or 6 others, met Mr. Hoxie; Capt. Hayes was with him, who was then Vice-President and Chief Engi-

neer, or something like that. Witness was then asked to state what took place and what conversations were held in the car with Mr. Hoxie, to which question the defendant made the objections heretofore made to the testimony of Wright about this same matter, as appears in his bill of exceptions No. 18 above; which objections being considered, were by the court overruled; and the defendant then excepted and took its bill of exceptions No. 25, and over these objections, the witness testified: That Mr. Hoxie said he was very anxious to carry out the agreement and contract made with Judge Reagan, with reference to establishing general offices of the H. & G. N. R. R. in Palestine, but that the road had to have houses, and they would expect the people of Palestine to provide comfortable homes for the officers of the road, as well as all of the employees; that a little conference was held, between witness and the other citizens, and they said to Mr. Hoxie that they would be glad to proceed at once to build all the homes they needed, and Mr. Hoxie said Capt. Hayes, Dr. Smith and himself would live together, and would want a home built for their comfort; that Maj. Evans, the Secretary of the road, would want a home, and so would Mr. McCoy, the General Freight and Passenger Agent; that these would want comfortable homes, and the others would be for employees, and just 4 or 5 room houses would do, and need not cost much. Hoxie said he would furnish the plans and specifications for the homes of Hayes, Evans and McCoy, and he asked Hayes how long it would take, and he replied, not more than ten days. Witness and Mr. Hoxie went out and looked over the grounds that belonged to the people, as well as the railroad company, and afterwards, Messrs. Hoxie, Hayes and Smith concluded to build a home there on the railroad grounds, which they did themselves at their own expense, having advised witness a few days after the visit to Palestine that they and Capt. Evans had gotten up some money, and would build their own houses. The Palestine Land and Building Com-

pany, the witness being Manager thereof, built a house for Mr. McCoy, under the supervision of Mr. McCoy, which cost about \$3500, and also remodeled the Reeves house at an expense of, say \$1300, and the last mentioned house was occupied by some of the officers of the railroad company, and the Land and Building Company also built another house, costing \$2500, occupied, he thinks, by an employe named Wells; the Palestine Land & Building Company built two more houses on May St., costing, say \$1550 each, and he thinks that Wright and Whitesell built two houses costing, say about \$1300 each. The houses were convenient to the general office grounds. Mr. Hoxie did not ask for any special number of houses, but said he would want comfortable houses, and we built according to that. Witness was asked whether, if there had been no agreement with Hoxie, would those houses have been built, to which question and any answer thereto the defendant objected that this was a conclusion of the witness, and that he does not know what other people would have done, which objection was overruled by the court and the defendant excepted and took its bill of exceptions No. 36, and, over the objections, the witness testified that the houses would certainly not have been built. It was in the spring of 1875 that the meeting was held with Mr. Hoxie. The general offices came to Palestine very late in the spring, about May or June. He knows they were there in August, 1875. The houses were completed and ready before the offices were moved, there was no trouble about that.

Cross-examination of Ozment:

Witness said that the Palestine Land & Building Company was in the building business at Palestine, but that he quit the Palestine Building and Land Company in 1876, and that he knew of no cases where his company ever built a house for rent outside of those railroad houses. That he never built other houses for rent. The Palestine Land & Building Company was wound up about

1880. The witness was with it from its origin to 1876; it had been in operation about a year before 1875, but there was not much going on, and was incorporated a very short time before 1875, not over two years, never did any work until they began on the Reeves house. The Palestine Land and Building Company confined its operations to building for railroad people, and before 1876 it only built for railroad people. A different company was organized at Palestine, in 1880, of which Mr. Bowers was President, which built houses to rent in Palestine. Witness was then asked to state one house that this Land Company built to rent; and he said that they loaned the money to the occupants, but that the Palestine Land & Building Company did build these houses to rent to the railroad employes. The witness said he did not know whether or not the Palestine Land & Building Company ever built any rent houses except those for the Hoxie people, and that he himself never built any houses for other people individually, but had put them in good condition, by means of repairs, and then rented them. "Q. Now, did you individually build any house to rent to anybody on application? A. I told you that I furnished the money and material or hardware, etc. Court Q.: That was as a member of the company? A. Yes, sir." Witness said he was a representative of the Palestine Land & Building Company, and he had a contract with Mr. Hoxie to build these houses and the people who occupied them were to pay rent. Mr. Hoxie said he would carry out the Reagan-Grow contract if the houses were furnished. "Q. Now, Mr. Hoxie did not know that you had this Palestine Land & Building Company? A. I don't know. He did not ask anything about that. He told us that he had a letter from Mr. Grow, and Mr. Grow wanted to carry out his contract." The witness could tell things that happened not only 42 years ago, but 62 years ago. It might be, of course, that Mr. Hoxie said that Mr. Grow told him, instead of having a letter from him, but witness insisted he said he had a



letter from Mr. Grow, and the witness generally remembers things when money or property is at stake. Mr. Hoxie said that he had a letter from Mr. Grow, and that he had come to carry out the contract, provided we would build houses to take care of the officers and employees; that the persons present in that conversation with Mr. Hoxie were Messrs. Wright and Bush, Doctors Shumat and Palmer, and he thinks Mr. N. R. Royall, all are dead except Wright and himself. Shumat had stock in the Palestine Land & Building Company, didn't think Royall had, but Royall built houses and rented them out, witness does not know to whom. The witness was then taken up on Mr. Grow's speech at the Court House, which he testified was made in 1872, and was asked to repeat what Mr. Grow said; he replied that having advanced a few preliminary remarks and compliments, he said "that he had made an agreement or contract with Judge Reagan to build his road into Palestine, and establish his shops, roundhouses and general offices permanently and forever; that he had agreed to accept \$150,000 of Anderson County bonds bearing 8%," and the witness thought that, in addition to that, he, Mr. Grow, seemed to have it in for the International Railroad. Mr. Grow said that his proposition through Judge Reagan to the voters of Anderson County was to have the bond issue of \$150,000 and they would construct the railroad and put the machine shops, general offices and roundhouses at Palestine; but, however, he said before that, he had an agreement with Judge Reagan for the citizens or city of Palestine. "Q. Do you remember that after these 42 years that he put in there: 'with the citizens of Palestine'?" A. Yes, sir, and I could tell you a great many things that happened back of that." The witness said he did not know anything about the law questions in the case when asked if he didn't know that Anderson County was precluded from a recovery in this case, and added "that is not the only contract." He was then asked: "Q. Well, now, say if this Anderson

County contract was the only contract alleged or sought to be proven in this case, then don't you so understand as I have asked you? A. I have heard that. Q. You know now, then, that if Anderson County, with its contract, were the only contract in this case, that the plaintiffs couldn't recover? A. I understand it since I have been so informed." The witness said that this had been his information for some time, but when asked whether or not he had understood that days before he answered "No, sir, I thought Anderson County was as much entitled to the benefits of these general offices and shops as anybody else was; it affected the entire county. Q. But the question is, you have understood before now that Anderson County, as such, alone, Mr. Ozment, couldn't recover in this case? A. I would like to ask you a question. COURT: Just answer his question, Mr. Ozment; it would not be proper for you to ask him any questions. Q. Never mind that, you just answer my questions; have you not understood for some months that Anderson County, as such, couldn't recover in this case? A. No, sir, not months; I hardly know how long, but possibly two years. Q. You have understood that proposition for that length of time? A. I guess I have, yes, sir. Q. Now, then, to get it absolutely straight: you have understood for about two years that Anderson County in this case, as such, couldn't recover? A. Yes, sir, I think I have. Q. And you have understood since the inception of this suit that the Reagan-Grow alleged contract has to be worked in here, with Judge Reagan representing the City of Palestine, as distinguished from Anderson County, in the negotiations with Mr. Grow, and not the county, for the plaintiffs to recover anything in this case with regard to that contract? A. Yes, sir, I have always understood that he was representing Palestine to get the benefits of the roundhouses and general offices. Q. Well, let's get back to this question; now, you have understood in this case that the plaintiffs have got to prove an additional

contract or something in the line of a contract outside of and independent as to the County contract? A. Yes, sir, I have said so. Q. Now, you also understand that one of these independent contracts as alleged by the plaintiffs is this alleged Reagan-Grow contract? A. Yes, sir, I so understand that. Q. Now, as you will remember the Reagan-Grow contract is the one in which you say Mr. Grow said in his speech that he had a contract with Judge Reagan? A. Yes, sir. Q. And, as you say, representing the city or the citizens of Palestine? A. Yes, sir. Q. That is the one you are referring to now? A. Yes, sir. Q. Now, under that point of the case and understanding that point of the case as you do, can you tell this jury after these 42 years, and not having heard that subject or that point raised until about two years ago; just explain to this jury how it is, after that length of time, and not hearing of this point until about two years ago, how it is you remember this fine legal point in there so well? Mr. Thos. B. Greenwood, for the plaintiffs: As the attorney says, if the court please, that is a legal question, and I think it would be better to ask the witness not these double questions regarding it; it is argumentative, and the like. Mr. Morris, for the defendant: I will change the form of the question if the court please."

Witness said that he heard Jacobs, McClure, Watts and Hughes and Mrs. Reagan testify in this case, at least in part, and Mrs. Reagan all through, and he thought that all except McClure testified to a differentiation, and the representation of the people of Palestine, as distinguished from the County. That Grow said in his speech that he had agreed with Judge Reagan that if Anderson County would vote \$150,000 in bonds, that he would build the road into Palestine, establish a depot within a half mile of the Court House, connect with the International, and that the county was to furnish the bonds, and the people of the City of Palestine were to get the benefit of the

roundhouses, machine shops and general offices, and that all of this was in consideration of the issue of the bonds in the sum of \$150,000. Ozment further said that he signed the petition to hold the election, and stating the proposition submitted to the people for the bond issue, which document was already in evidence; that he knew all about the Reagan-Grow contract when he signed that petition. Q. The petition was gotten up within 2 or 3 weeks after that? A. Yes, sir; along there somewhere. Questioned about the contents of the petition, he said it was an ordinary petition of that kind, is all I can tell you, "I never paid so overly much attention to it." He thought he read it over, then he stated that he did read it over. He was asked to state the substance of the petition; he answered, "just ordering an election, yes, sir, petitioning an election to vote the H. & G. N. R. R. Co., \$150,000 in bonds, they to build a line into Palestine and connect with the International," and as to the balance, the witness said, "I don't remember the balance." "Q. Do you not remember anything else in that whole petition? A. I don't think I do. Q. You don't know the balance of that petition? A. I sign a great number of petitions that I don't know anything about." The witness was asked whether his memory was clearer on verbal statements which he had heard at the same time than a petition he signed at the time, and he answered that "these petitions are gotten up around town that way," and he was asked whether he read it, and he answered, "Yes, sir, I read hundreds of petitions of that kind, I don't know anything about." He further stated that he heard this very petition read into the evidence during this trial, the day before the day on which he is testifying, but that he did not listen to it. Witness was asked what the petition said about roundhouses, and answered, "I don't know." He was asked what it said about machine shops; he answered, "I don't know, I don't remember." He was asked what it said about general offices; he answered,

“That was not included in it, I don’t suppose,” and then said he did not remember. He was asked what was said about a depot, and he answered, “It was to be within a half-mile of the Court House.” Witness said he was not writing up contracts himself, nor the petitions for the election, that was not his business, believed he was reputed to be a systematic man. He said the railroad never built the depot. “Q. Do you mean to say that the reason you did not include in the petition the contract about the general offices, machine shops and roundhouses was because Grow said he was willing to do something? A. Yes, sir, and Judge Reagan \* \* \*. Mr. Morris, for defendant: I did not ask anything about Judge Reagan. A. Judge Reagan said he had an agreement with Mr. Grow to do it. Q. You understood that that petition was the contract being made, did you not? A. I did not have anything to do with the writing of the contract, and I am no lawyer.” He said he knew it was important all the time to have machine shops, general offices and roundhouses at Palestine, and that he signed this petition to be voted on as a contract by the people, although those things were not in the petition, and although he had heard before he signed it that Reagan and Grow had made a contract by which the general offices, machine shops and roundhouses should be established in Palestine; and he was asked why he signed the petition with those things left out, and he answered he did it because everything was trusted to Judge Reagan, and he (witness) was not a lawyer. He said he could make a contract to buy 200 head of cattle, and if the contract specified only 30, and should be 200 head, he would not sign it, but in this case he was not representing the legal department; he knew that the petition called an election for a bond issue, that it specified the road was to build and equip a depot, and that he didn’t protest because the other things were not in the petition and contract because he put his faith in Judge Reagan, and he believed that Mr. Grow’s promise would be carried

out. He did not know whether or not Judge Reagan wrote the petition, he signed it. The witness was then taken to plaintiffs' amended petition, to which was appended an affidavit of his own. He said he had heard it read, but there had been so many pleadings that he did not know much about them now. Asked as to the contents of the petition on which the trial was held, he said it charged that the H. & G. N. R. R. Co. did not comply with its contract, but that he did not propose to understand all things set forth in that petition, the lawyers wrote it; the object of it was to make the I. & G. N. R. R. Co. move its offices back, under a contract specially made between Judge Reagan and Mr. Grow, and that it states a great many things; that he could not state the substance of the petition to the jury, as he could not catch it all, but he read it over in Palestine, and swore to it twice, that he made affidavit to it that it was true, and stated "usually a client will sign anything his lawyer writes up." He understood the object of the petition when he swore to it. He was asked if he knew the facts in the petition, and to answer that question "yes" or "no," and he answered, "Well, what do you want"? He said that he heard it read and signed it, and swore to it twice, like every client does in a case.

Here lawyer for the plaintiffs broke in, and stated that Ozment made affidavit only to a portion of the petition, that portion which applies to the rent contract, and objected to his answering that inquiry. The Court then sustained the objection to questioning him further on that point, but he was questioned further, and requested to state the substance of the affidavit he signed on December 19th, 1913, and answered: "Yes, sir, I suppose I was swearing to the contract between Judge Reagan and Mr. Grow, for the citizens of Palestine. I was swearing to an affidavit with regard to Judge Reagan making a contract representing the people of Palestine and Mr. Grow representing the railroad; that is my recollection about that

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affidavit. I don't know the technical part of pleadings; never trust my mind with such things as that, because I am no lawyer, and I leave those things to my lawyer." Here the affidavit attached to the petition, made by Ogment, was read to him, and he was asked whether he made that affidavit, and he said he guessed the paper showed it.

The witness said he knew nothing about the \$300,000 bond the H. & G. N. R. R. gave the County to secure the maintenance of the depot within a half-mile of the Court House, and supposed that the County Court and Judge Reagan were looking after things of that sort, but did not know it. He did not know whether Judge Reagan was counsel for the County or not, but supposed he was looking after those things. Coming back to Grow, he said that he understood Mr. Grow to say that he had a contract or agreement with Judge Reagan that if the people of Anderson County would vote \$150,000 in bonds and deliver them to the H. & G. N. R. R. they would build into Palestine and connect with the International Railroad, and build a depot within a half-mile of the Court House, put the machine shops, roundhouses and general offices there, and keep them there. "That is exactly what Grow said." Witness remembered the suit brought by Williams & Word for Anderson County, against the H. & G. N. R. R. Co., in 1874; they were reliable men, living in Palestine. Witness said he was not familiar with the suit, and took no interest in it, because he wanted the people to live up to their contract; stated that Williams & Word were hired by some people in the north end of the county, and that he supposed the lawyers "wanted their fee in the case" of Anderson County and H. & G. N. R. R. Co. He understood that the suit was brought on a claim that the railroad had failed to build on through the county, that Mr. Grow had said in his speech that he was going to build the road on north to the Red River, and build a great north and south road, and in that regard the contract was that any railroad was to get \$50,000 in



bonds which built to the north boundary of the county. The I. & G. N. road did not build north from Palestine, it went northeast to Jacksonville. When Williams & Word sued he did not think the general offices had been moved to Palestine. Word was a good lawyer.

Re-direct:

When Grow made his speech Judge Reagan's canvass had terminated. The speech was made only a few days before the election.

37. Geo. A. Wright, recalled by the plaintiffs, stated: "I think the rent houses built under the Hoxie agreement were all completed within a few months."

Re-cross:

He said that he and several persons were present when Grow applied to the County Court for the bonds, but he could not remember who they were besides the parties he had mentioned.

38. Mrs. John H. Reagan, recalled by the plaintiffs, testified that Judge Reagan died the 5th day of March, 1905.

39. Horace Word was introduced as a witness by plaintiffs, and testified that he lives in Palestine, and is the son of T. J. Word, who was a lawyer, and he is a brother of John J. Word, who was a lawyer, and of Jeff Word, Jr., also a lawyer, and was Deputy Sheriff in January, 1872, in Anderson County, and it was his duty to wait on the County Court during their sessions, and then testified that Mr. Grow appeared before the court to apply for the county bonds. He was then requested to state what was said and done there on that occasion, to which the defendant objected, opposing the objections set forth in their Bill of Exceptions No. 12, and again recited, and that the relations and obligations between the H. & G. N. R. R. and the County, and considerations to each other had all been settled, and that there would be no consideration for a new contract or new promises, and that declarations and admissions of Grow, if any, as agent,

were inadmissible after so long a time after the event; which objections were overruled, and the defendant then took its Bill of Exceptions No. 38, and, over these objections, the witness testified that Grow presented, as he remembered, his application to have the bonds issued; that there was opposition by someone, possibly Shattuck, who did not want to issue the bonds until the depot and general offices and shops were established and the road built into the city, and Mr. Grow told them he did not think it was proper to make such an objection; that it was well understood by the people what they were doing before they voted, and that the Company had promised to, and was able to, do these things. Then he insisted it should be done, and I believe he said it had reached the point where when either one, as he expressed it, had the courts open to them; I believe his expression was that the courts were open to them. "Q. Go ahead. A. And he told them there, in speaking of what had been understood and what had been done, he said that the county had pledged themselves to issue the bonds, and that he was entitled to the bonds; and he was just talking in a good natured, friendly way, and there did not seem to be much formality about it. Q. State whether any objection was made by anybody to the record of the bond issue, in the way in which it was about to be gotten up, and if so, what Mr. Grow had to say on that subject. A. Well, there was something said about it, but Mr. Grow seemed to have satisfied them about the contract or agreement, and some of them insisted on writing it into the record, and he took the position and told them he did not consider it necessary; that it would not be any more binding nor any more secure, and that it would hinder the handling of the bonds to write it in the record; that is, into the bond record, or into the bonds, I am not sure which; I believe he said to write it into the bonds, and that it would profit the county or people nothing, and that they were entitled to the issuance of the bonds. Q. What was the final re-

sult of that discussion on the part of Mr. Grow before the Court? A. They finally issued or agreed to issue the bonds."

Word, cross-examined by the defendant:

Had nothing to do with the matters he has testified to whatever, under no obligation to follow it up, merely giving his recollection after these many years, which is not as clear as he would like it to be, but thinks that Mr. Grow read some and talked some, read some kind of a document. Witness did not know that he could state the contents of such document, it may be that he had heard some of it read here at this trial, could not quote what Mr. Grow read, but his inability to do that does not make him doubtful about what occurred, thinks there is a better reason for remembering what he heard Mr. Grow say than what he heard him read. The substance of what he read was an application for the bonds. Shattuck's objection was, he did not think the bonds should be issued until the railroad company had complied with its undertakings, which were, as Shattuck protested, the depot, shops and general offices. Did not think that Grow offered to give a bond to cover the missing matters, did not remember that Grow said he would give them a bond in double the amount to cover any missing matter; did not know that he gave a bond; did not remember that the Commissioners' Court made an order that the H. & G. N. R. R. Co. should give a \$300,000 bond to guarantee the performance of their contract. Asked whether or not Shattuck objected because the general offices had been promised, but not brought to Palestine, witness said that he gained his first impression about what the Railroad was going to do from that discussion before the County Court, and does not remember that he ever had any idea about the bonds except that. This was the beginning of his knowledge, he had just returned after having been away to school; had read Shattuck's protest recently, not over six months ago, he thinks. He was then asked to

state what was in Shattuck's protest, the written protest; he answered that he did not pay much attention to it, but was asked why he read it, and answered "posting myself up, to see if my recollection was good"; that he was expecting to have to testify about this very thing, and his recollection is that in that written protest Shattuck only mentioned the depot. The witness said he read the written protest in order to get his mind straight. He glanced through the written protest, but don't know that he read it all. That he tried to be a systematic man of business, and was a good clerical man; that he was trying to read those records over to satisfy himself about his recollection, at no one's suggestion; that he did not think any thing was mentioned in the written record except about the depot. Here Shattuck's protest was read to the witness, and the witness said he did not believe that he had read all of the first ground of his objections, and did not believe he read the second ground of his objections. If there was anything in Shattuck's protest about fraud in the election, he don't think he read it. He also read through a portion of the bond record, and saw, but did not read, Grow's written application for the issue of bonds, nor the judgment of the County Court, but did read Shattuck's protest to see if he remembered correctly the date of the occurrence which was sometime in January, 1873, adding, "I remembered what I did remember very well, but was more interested to see if I fixed the exact date right." The date was about Jan. 29, 1873. He said that he might be mistaken about other things, but would not admit that a written memorandum at the time is better evidence than a man's memory, "that depends, as we have a lot of bob-tail records." At the time members of the court were present, but could not say who else, if anyone, was there. Could not say that Shattuck filed a written protest in open court, but remembers that Grow read his application there to the court.

The plaintiffs rested at this point.

